

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2022

or

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File Number: 001-39783

FOXO TECHNOLOGIES INC.
(Exact name of registrant as specified in its charter)

Delaware _____ (State or other jurisdiction of incorporation or organization) 729 N. Washington Ave., Suite 600 Minneapolis, MN _____ (Address of principal executive offices)	85-1050265 _____ (I.R.S. Employer Identification No.) 55401 _____ (Zip Code) (612) 562-9447 (Registrant's telephone number, including area code)
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Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class:	Trading Symbol(s)	Name of Each Exchange on Which Registered:
Class A Common Stock, par value \$0.0001	FOXO	NYSE American
Warrant, each whole warrant exercisable for one share of Class A Common Stock for \$11.50 per share	FOXO.WS	NYSE American

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2.

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☒	Smaller reporting company	☒
Emerging growth company	☒		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of November 18, 2022, there were 31,187,069 shares of Class A common stock, par value \$0.0001 per share (the "Class A Common Stock") of the registrant issued and outstanding.

FOXO TECHNOLOGIES INC.
FORM 10-Q FOR THE QUARTER ENDED SEPTEMBER 30, 2022

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PART I – FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

FOXO TECHNOLOGIES INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

(Dollars in thousands, except per share data)

	September 30, 2022 (unaudited)	December 31, 2021
Assets		
Current assets		
Cash and cash equivalents	\$ 10,454	\$ 6,856
Supplies	2,057	295
Prepaid expenses	511	444
Prepaid consulting fees	4,758	-
Other current assets	20	23
Total current assets	17,800	7,618
Property and equipment, net	136	187
Intangible assets	2,071	191
Investments	100	100
Reinsurance recoverables	18,754	19,463
Cloud computing arrangements	4,709	2,745
Forward purchase collateral	27,919	-
Total assets	\$ 71,489	\$ 30,304
Liabilities and Stockholders' Equity		
Current liabilities		
Accounts payable	\$ 2,706	\$ 3,456
Related party payable	500	-
Shares payable	384	-
Parallel run advance	256	-
Accrued and other liabilities	504	402
Forward purchase put derivative	1,284	-
Forward purchase collateral derivative	27,378	-
Related party convertible debentures	-	9,967
Convertible debentures	-	22,236
Total current liabilities	33,012	36,061
Warrant liability	1,038	-
Long term debt	2,918	-
Policy reserves	18,754	19,463
Total liabilities	55,722	55,524
Commitments and contingencies (Note 13)		
Stockholders' equity (deficit)		
Preferred stock, \$0.0001 par value; 10,000,000 shares authorized, none issued or outstanding as of September 30, 2022	-	-
Class A common stock, \$0.0001 par value, 500,000,000 shares authorized, 33,027,830 issued and outstanding as of September 30, 2022	3	-
Undesignated preferred stock, \$.00001 par value; 90,000,000 shares authorized, none issued and outstanding as of December 31, 2021)	-	-
Non-redeemable preferred stock series A, \$.00001 par value; 10,000,000 shares authorized, 8,000,000 shares issued and outstanding as of December 31, 2021	-	21,854
Common stock class A, \$.00001 par value; 800,000,000 shares authorized; 30,208 shares issued and outstanding as of December 31, 2021)	-	-
Common stock class B, \$.00001 par value, 100,000,000 shares authorized; 2,000,000 shares issued and outstanding as of December 31, 2021)	-	-
Additional paid-in capital	144,672	4,902
Accumulated deficit	(128,908)	(51,976)
Total stockholders' equity (deficit)	15,767	(25,220)
Total Liabilities and Stockholders' Equity (Deficit)	\$ 71,489	\$ 30,304

See accompanying Notes to Unaudited Consolidated Financial Statements

FOXO TECHNOLOGIES INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(Dollars in thousands, except per share data)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Total revenue	\$ 14	\$ 31	\$ 93	\$ 93
Operating expenses:				
Research and development	558	1,665	2,160	4,321
Selling, general and administrative	8,269	2,721	17,239	7,640
Total operating expenses	8,827	4,386	19,399	11,961
Loss from operations	(8,813)	(4,355)	(19,306)	(11,868)
Non-cash change in fair value of convertible debentures	(3,697)	(22,571)	(28,180)	(24,890)
Change in fair value of warrant liability	1,349	-	1,349	-
Change in fair value of forward purchase put derivative	(1,284)	-	(1,284)	-
Change in fair value of forward purchase collateral derivative	(27,378)	-	(27,378)	-
Other expense	(779)	(2)	(883)	(31)
Interest expense	(424)	(313)	(1,250)	(825)
Total other expense	(32,213)	(22,886)	(57,626)	(25,746)
Loss before income taxes	(41,026)	(27,241)	(76,932)	(37,614)
Provision for income taxes	-	-	-	-
Net loss	\$ (41,026)	\$ (27,241)	\$ (76,932)	\$ (37,614)
Net loss per Class A common stock, basic and diluted	\$ (6.70)	\$ (4.68)	\$ (12.88)	\$ (6.47)

See accompanying Notes to Unaudited Consolidated Financial Statements

FOXO TECHNOLOGIES INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)
(Dollars in thousands)
(Unaudited)

	Stockholder Subscription Receivable	FOXO Technologies Operating Company						FOXO Technologies Inc.		Additional Paid-in- Capital	Accumulated Deficit	Total
		Series A Preferred Stock		Common Stock (Class A)		Common Stock (Class B)		Common Stock (Class A)				
		Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount			
Three Months Ended September 30, 2021												
Balance, June 30, 2021	\$ (1,250)	8,000,000	\$ 21,854	30,000	\$ -	2,000,000	\$ -	-	\$ -	\$ 4,447	\$ (23,861)	\$ 1,190
Net loss	-	-	-	-	-	-	-	-	-	-	(27,241)	(27,241)
Lease contributions	-	-	-	-	-	-	-	-	-	137	-	137
Equity-based compensation	-	-	-	-	-	-	-	-	-	45	-	45
Subscriptions received	1,250	-	-	-	-	-	-	-	-	-	-	1,250
Balance, September 30, 2021	\$ -	8,000,000	\$ 21,854	30,000	\$ -	2,000,000	\$ -	-	\$ -	\$ 4,629	\$ (51,102)	\$ (24,619)
Nine Months Ended September 30, 2021												
Balance, December 31, 2020	\$ (3,750)	8,000,000	\$ 21,854	-	\$ -	2,000,000	\$ -	-	\$ -	\$ 4,104	\$ (13,488)	\$ 8,720
Net loss	-	-	-	-	-	-	-	-	-	-	(37,614)	(37,614)
Lease contributions	-	-	-	-	-	-	-	-	-	410	-	410
Equity-based compensation	-	-	-	-	-	-	-	-	-	102	-	102
Subscriptions received	3,750	-	-	-	-	-	-	-	-	-	-	3,750
Warrants issued	-	-	-	-	-	-	-	-	-	13	-	13
Issuance of shares for restricted stock	-	-	-	30,000	-	-	-	-	-	-	-	-
Balance, September 30, 2021	\$ -	8,000,000	\$ 21,854	30,000	\$ -	2,000,000	\$ -	-	\$ -	\$ 4,629	\$ (51,102)	\$ (24,619)
Three Months Ended September 30, 2022												
Balance, June 30, 2022	\$ -	8,000,000	\$ 21,854	1,545,154	\$ -	2,000,000	\$ -	-	\$ -	\$ 12,026	\$ (87,882)	\$ (54,002)
Activity prior to the business combination:												
Net loss	-	-	-	-	-	-	-	-	-	-	(9,531)	(9,531)
Equity-based compensation	-	-	-	-	-	-	-	-	-	211	-	211
Effects of the business combination:												-
Conversion of Series A Preferred Stock	-	(8,000,000)	(21,854)	8,000,000	-	-	-	-	-	21,854	-	-
Conversion of Bridge Loans	-	-	-	15,172,729	-	-	-	-	-	88,975	-	88,975
Conversion of Class B	-	-	-	2,000,000	-	(2,000,000)	-	-	-	-	-	-

Common Stock													
Conversion of existing Class A Common Stock	-	-	-	(26,717,883)	-	-	-	15,518,705	1	-	-	1	
Reverse recapitalization	-	-	-	-	-	-	-	8,143,649	1	19,677	-	19,678	
Activity after the business combination:	-	-	-	-	-	-	-	-	-	-	-	-	
Net loss	-	-	-	-	-	-	-	-	-	-	(31,495)	(31,495)	
Equity-based compensation	-	-	-	-	-	-	-	9,175,000	1	329	-	330	
Cantor Commitment Fee	-	-	-	-	-	-	-	190,476	-	1,600	-	1,600	
Balance, September 30, 2022	\$ -	-	\$ -	-	\$ -	-	\$ -	33,027,830	\$ 3	\$ 144,672	\$ (128,908)	\$ 15,767	

Nine Months Ended September 30, 2022

Balance, December 31, 2021	\$	-	8,000,000	\$ 21,854	30,208	\$	-	2,000,000	\$	-	-	\$	-	4,902	\$	(51,976)	\$(25,220)		
Activity prior to the business combination:																			
Net loss		-	-	-	-	-	-	-	-	-	-	-	-	-		(45,437)	(45,437)		
Lease contributions		-	-	-	-	-	-	-	-	-	-	-	-	225		-	225		
Equity-based compensation		-	-	-	-	-	-	-	-	-	-	-	-	717		-	717		
Warrant repurchase		-	-	-	-	-	-	-	-	-	-	-	-	(507)		-	(507)		
Issuance of shares for exercised stock options		-	-	-	14,946	-	-	-	-	-	-	-	-	-		-	-		
Issuance of shares for consulting agreement		-	-	-	1,500,000	-	-	-	-	-	-	-	-	6,900		-	6,900		
Effects of the business combination:																			
Conversion of Series A Preferred Stock		-	(8,000,000)	(21,854)	8,000,000	-	-	-	-	-	-	-	-	21,854		-	-		
Conversion of Bridge Loans		-	-	-	15,172,729	-	-	-	-	-	-	-	-	88,975		-	88,975		
Conversion of Class B Common Stock		-	-	-	2,000,000	-	(2,000,000)	-	-	-	-	-	-	-		-	-		
Conversion of existing Class A Common Stock		-	-	-	(26,717,883)	-	-	-	-	15,518,705	1	-	-	-		-	1		
Reverse recapitalization		-	-	-	-	-	-	-	-	8,143,649	1	19,677	-	-		-	19,678		
Activity after the business combination:																			
Net loss		-	-	-	-	-	-	-	-	-	-	-	-	-		(31,495)	(31,495)		
Equity-based compensation		-	-	-	-	-	-	-	-	9,175,000	1	329	-	-		-	330		
Cantor Commitment Fee		-	-	-	-	-	-	-	-	190,476	-	1,600	-	-		-	1,600		
Balance, September	\$	-	-	\$	-	\$	-	-	\$	-	33,027,830	\$	3	\$	144,672	\$	(128,908)	\$	15,767

See accompanying Notes to Unaudited Consolidated Financial Statements

FOXO TECHNOLOGIES INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Dollars in thousands)
(Unaudited)

	Nine Months Ended September 30,	
	2022	2021
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	\$ (76,932)	\$ (37,614)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation	159	71
Equity-based compensation	1,002	8
Cantor Commitment Fee	1,600	-
Amortization of consulting fees	2,954	-
Change in fair value of convertible debentures	28,180	24,890
Change in fair value of forward purchase agreement collateral derivative	27,378	-
Change in fair value of warrants	(1,349)	-
Change in fair value of forward purchase agreement put derivative	1,284	-
Conversion of accrued interest	593	-
Contributions in the form of rent payments	225	410
Amortization of right-of-use assets	20	-
Accretion of operating lease liabilities	(20)	-
Recognition of prepaid offering costs upon election of fair value option	107	-
Accretion of interest earned on investment in convertible promissory note	-	(26)
Other	-	13
Changes in operating assets and liabilities:		
Supplies	(1,762)	(296)
Prepaid expenses, consulting fees, and other current assets	(1,002)	55
Cloud computing arrangements	(1,941)	(1,701)
Reinsurance recoverables	709	88
Accounts payable	(489)	2,247
Accrued and other liabilities	761	197
Policy reserves	(709)	(88)
Net cash used in operating activities	(19,232)	(11,746)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchase of property and equipment	(108)	(73)
Asset acquisition, net of cash acquired	-	(63)
Development of internal use software	(1,622)	(9)
Acquisition of convertible promissory note	-	(50)
Net cash used in investing activities	(1,730)	(195)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from issuance of related party convertible debentures	-	3,250
Proceeds from issuance of convertible debentures	28,000	7,250
Warrant repurchase	(507)	-
Senior PIK Notes proceeds	3,458	-
Reverse recapitalization proceeds	23,226	-
Forward purchase agreement escrow	(29,135)	-
Forward purchase agreement proceeds	484	-
Forward purchase agreement collateral release to Meteora	733	-
Deferred offering costs	(539)	-
Related party promissory note	(1,160)	-
Proceeds received from stockholder subscription receivable	-	3,750
Net cash provided by financing activities	24,560	14,250
Net increase in cash and cash equivalents	3,598	2,309
Cash and cash equivalents at beginning of period	6,856	8,123
Cash and cash equivalents at end of period	\$ 10,454	\$ 10,432
NONCASH INVESTING AND FINANCING ACTIVITIES:		
Conversion of phantom equity to stock options	\$ -	\$ 54
Conversion of debt	\$ 88,382	\$ -
Conversion of preferred stock	\$ 21,854	\$ -
Accrued internal use software	\$ 239	\$ -

See accompanying Notes to Unaudited Consolidated Financial Statements

Note 1 DESCRIPTION OF BUSINESS

FOXO Technologies Inc. (“FOXO” or the “Company”), f/k/a Delwinds Insurance Acquisition Corp. (“Delwinds”), a Delaware corporation, was originally formed in April 2020 as a publicly traded special purpose company for the purpose of effecting a merger, capital stock exchange, asset acquisition, reorganization, or similar business combination involving one or more businesses. FOXO is a leader in commercializing epigenetic biomarker technology to support groundbreaking scientific research and disruptive next-generation business initiatives. The Company applies automated machine learning and artificial intelligence technologies to discover epigenetic biomarkers of human health, wellness and aging. The Company has been building a life insurance business to support the commercial applications of its epigenetic biomarker underwriting technology and consumer engagement platform service business. On August 20, 2021, the Company completed its acquisition of Memorial Insurance Company of America (“MICOA”) and renamed it FOXO Life Insurance Company.

The Company manages and reports results of operations for two reportable business segments: FOXO Life, the Company’s life insurance business operations, and FOXO Labs, the Company’s epigenetic biomarker technology business operations.

The Business Combination

On February 24, 2022, Delwinds entered into a definitive Agreement and Plan of Merger, dated as of February 24, 2022, as amended on April 26, 2022, July 6, 2022 and August 12, 2022 (the “Merger Agreement”), with FOXO Technologies Inc., now known as FOXO Technologies Operating Company (“FOXO Technologies Operating Company”), DWIN Merger Sub Inc., a Delaware corporation and a wholly owned subsidiary of Delwinds (“Merger Sub”), and DIAC Sponsor LLC (the “Sponsor”), in its capacity as the representative of the stockholders of Delwinds from and after the closing (the “Closing”) of the transactions contemplated by the FOXO Transaction Agreement (collectively, the “Transaction” or the “Business Combination”). Simultaneously with the execution of the Merger Agreement, Delwinds entered into a Common Stock Purchase Agreement (the “ELOC Agreement”) with CF Principal Investments LLC (the “Cantor Investor”), pursuant to which, assuming satisfaction of certain conditions and subject to limitations set forth in the ELOC Agreement, the Company would have the right, from time to time to sell the Cantor Investor up to \$40,000 in shares of the Company’s Class A common stock (the “Class A Common Stock”) until the first day of the next month following the 36-month anniversary of when the Securities and Exchange Commission (“SEC”) has declared effective a registration statement covering the resale of such shares of Class A Common Stock or until the date on which the facility has been fully utilized, if earlier.

The Business Combination was approved by Delwinds’ stockholders on September 14, 2022 and closed on September 15, 2022 (the “Closing Date”) whereby Merger Sub merged into FOXO Technologies Operating Company, with FOXO Technologies Operating Company surviving the merger as a wholly owned subsidiary of the Company (the “Combined Company”), and with FOXO Technologies Operating Company security holders becoming security holders of the Combined Company. Immediately upon the Closing, the name of Delwinds was changed to FOXO Technologies Inc.

Following the Closing, FOXO is a holding company whose wholly-owned subsidiary, FOXO Technologies Operating Company, conducts all of the core business operations. FOXO Technologies Operating Company maintains its two wholly-owned subsidiaries, FOXO Labs Inc. and FOXO Life, LLC. FOXO Labs maintains a wholly-owned subsidiary, Scientific Testing Partners, LLC, while FOXO Life Insurance Company is a wholly-owned subsidiary of FOXO Life, LLC. References to “FOXO” and the “Company” in these unaudited consolidated financial statements refer to FOXO Technologies Operating Company and its wholly-owned subsidiaries prior to the Closing and FOXO Technologies Inc. following the Closing.

FOXO TECHNOLOGIES INC. AND SUBSIDIARIES
NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS
(Dollars in thousands, except per share data)

In accordance with the terms of the Merger Agreement, at Closing, the Company (i) acquired 100% of the issued and outstanding FOXO Technologies Operating Company Class A common stock (the “FOXO Class A Common Stock”) in exchange for equity consideration in the form of the Company’s Class A Common Stock, (ii) acquired 100% of the issued and outstanding shares of FOXO Technologies Operating Company Class B common stock (the “FOXO Class B Common Stock”) in exchange for equity consideration in the form of the Company’s Class A Common Stock.

Immediately prior to the Closing, the following transactions occurred:

- 8,000,000 shares of FOXO Technologies Operating Company Series A preferred stock (the “FOXO Preferred Stock”) were exchanged for 8,000,000 shares of FOXO Class A Common Stock.
- The 2021 Bridge Debentures (as defined in Note 5) in the principal amount, together with accrued and unpaid interest, of \$24,402 were converted into 6,759,642 shares of FOXO Class A Common Stock.
- The holders of the 2022 Bridge Debentures (as defined in Note 5) in the principal amount, together with accrued and unpaid interest, of \$34,496 were converted into 7,810,509 shares of FOXO Class A Common Stock.

As a result of and upon the Closing, among other things, (1) all outstanding shares of FOXO Class A Common Stock (after giving effect to the conversion of the FOXO Preferred Stock, the 2021 Bridge Debentures, and 2022 Bridge Debentures into share of FOXO Class A Common Stock) and FOXO Class B Common Stock were converted into 15,518,705 shares of the Company’s Class A Common Stock, (2) all FOXO options and FOXO warrants outstanding immediately before the Closing (“Assumed Options” and “Assumed Warrants”, as applicable) were assumed and converted, subject to adjustment pursuant to the terms of the Merger Agreement, into options and warrants, respectively, of the Company, exercisable for share of the Company’s Class A Common Stock and (3) other than the Assumed Options and Assumed Warrants, all other convertible securities and other rights to purchase capital stock of FOXO Technologies Operating Company were retired and terminated, if they were not converted, exchanged or exercised for FOXO Technologies Operating Company stock immediately prior the Closing.

Note 2 LIQUIDITY AND MANAGEMENT’S PLAN

The Company’s history of losses requires management to critically assess its ability to continue operating as a going concern. For the three and nine months ended September 30, 2022, the Company incurred a net loss of \$41,026 and \$76,932, respectively. As of September 30, 2022, the Company had an accumulated deficit of \$128,908. Cash used in operating activities for the nine months ended September 30, 2022 was \$19,232. As of September 30, 2022, the Company had \$5,453 of available cash and cash equivalents, excluding amounts required to be held as statutory capital and surplus by FOXO Life Insurance Company.

The Company’s ability to continue as a going concern is dependent on generating revenue, raising additional equity or debt capital, reducing losses and improving future cash flows. The Company will continue ongoing capital raise initiatives and has demonstrated previous success in raising capital to support its operations. For instance, in the first and second quarters of 2022, the Company issued convertible debentures for \$28,000 that has subsequently converted to equity. However, the Company can provide no assurance that these actions will be successful or that additional sources of financing will be available on favorable terms, if at all. As such, until additional equity or debt capital is secured and the Company begins generating sufficient revenue, there is substantial doubt about the Company’s ability to continue as a going concern for the one-year period following the issuance of these unaudited consolidated financial statements.

Note 3 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

BASIS OF PRESENTATION AND PRINCIPLES OF CONSOLIDATION

The unaudited consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”) for interim financial information and the instructions to Form 10-Q and Article 10 of Regulation S-X of the SEC. Certain information or footnote disclosures normally included in financial statements prepared in accordance with U.S. GAAP have been condensed or omitted, pursuant to the rules and regulations of the SEC for interim financial reporting. Accordingly, the unaudited consolidated financial statements do not include all information and footnotes necessary for a complete presentation of financial position, results of operations or cash flows. The unaudited consolidated financial statements should be read in conjunction with the Company’s audited consolidated financial statements as of and for the year ended December 31, 2021 and the notes thereto. The consolidated balance sheet data as of December 31, 2021 was derived from the audited consolidated financial statements as of that date but does not include all disclosures required by U.S. GAAP. In the opinion of management, the unaudited consolidated financial statements include all adjustments of a normal or recurring nature, which are necessary for a fair presentation of financial position, operating results and cash flows for the periods presented. Operating results for the three and nine months ended September 30, 2022 are not necessarily indicative of the results that may be expected for the year ending December 31, 2022.

Pursuant to the Business Combination, the acquisition of FOXO Technologies Operating Company by Delwinds was accounted for as a reverse recapitalization in accordance with U.S. GAAP (the “Reverse Recapitalization”). Under this method, Delwinds was treated as the “acquired” company for financial reporting purposes. For accounting purposes the Reverse Recapitalization was treated as the equivalent of FOXO Technologies Operating Company issuing equity securities for the net assets of Delwinds, accompanied by a recapitalization. The net assets of Delwinds are stated at historical cost, with no goodwill or other intangible asset being recorded. The condensed assets, liabilities and results of operations prior the Reverse Recapitalization are those of FOXO Technologies Operating Company.

The unaudited consolidated financial statements include the accounts of FOXO and its wholly-owned subsidiaries. All intercompany balances and transactions are eliminated in consolidation.

EMERGING GROWTH COMPANY

The Company is an “emerging growth company,” as defined in Section 2(a) of the Securities Act of 1933 and as modified by the Jumpstart Our Business Startups Act of 2012, and it may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies including, but not limited to, not being required to comply with the independent registered public accounting firm attestation requirements of Section 404 of the Sarbanes-Oxley Act, and reduced disclosure obligations regarding executive compensation in its periodic reports and proxy statements. Further, Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Securities Exchange Act of 1934) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that a company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such election to opt out is irrevocable. The Company has elected not to opt out of such extended transition period which means that when a standard is issued or revised and it has different application dates for public or private companies, the Company, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard. This may make comparison of the Company’s consolidated financial statements with another public company which is neither an emerging growth company nor an emerging growth company which has opted out of using the extended transition period difficult because of the potential differences in accounting standards used.

USE OF ESTIMATES

The preparation of the unaudited consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reported period. Management evaluates these estimates and judgments on an ongoing basis and bases its estimates on experience, current and expected future conditions, third-party evaluations and various other assumptions that management believes are reasonable under the circumstances. It is reasonably possible that actual experience could differ from the estimates and assumptions utilized. All revisions to accounting estimates are recognized in the period in which the estimates are revised. A description of each critical estimate is incorporated within the discussion of the related accounting policies which follow.

CASH AND CASH EQUIVALENTS

The company considers all highly liquid investments purchased with an original maturity of three months or less to be cash equivalents. Cash equivalents are stated at cost, which approximates fair value. At times, cash account balances may exceed insured limits. The Company has not experienced any losses related to such accounts and believes it is not exposed to any significant credit risk on its cash and cash equivalents.

PROPERTY AND EQUIPMENT, NET

Property and equipment is recorded at cost. The cost of additions and betterments are capitalized and expenditures for repairs and maintenance are expensed in the period incurred. When property and equipment is sold or retired, the related cost and accumulated depreciation are removed from the consolidated balance sheets and any gain or loss is included in the consolidated statements of operations as incurred. When property and equipment is abandoned before the end of its previously estimated useful life the depreciable life is revised to the shorter remaining useful life. Property and equipment is presented net of accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives of the assets, which are generally three years for computers and office equipment and seven years for furniture and fixtures. Leasehold improvements are depreciated over the shorter of their estimated useful life or the remaining term of the lease.

IMPAIRMENT OF LONG-LIVED ASSETS

The Company reviews its long-lived assets, including property and equipment and right-of-use assets, to determine potential impairment annually or whenever events or changes in circumstances indicate that the carrying amount of an asset group may not be fully recoverable. Recoverability is measured by comparing the carrying amount of the asset group with the future undiscounted cash flows the assets are expected to generate. If such assets are considered impaired, an impairment loss would be measured by comparing the amount by which the carrying value exceeds the fair value of the long-lived assets. Management determined that there was no impairment of long-lived assets as of September 30, 2022 and December 31, 2021.

CAPITALIZED IMPLEMENTATION COSTS

The Company capitalizes certain development costs associated with internal use software and cloud computing arrangements incurred during the application development stage. The Company expenses costs associated with preliminary project phase activities, training, maintenance, and any post-implementation costs as incurred. Capitalized costs related to projects to develop internal use software are included within intangible assets on the consolidated balance sheets, while capitalized costs related to cloud computing arrangements are included within cloud computing arrangements on the consolidated balance sheets. Capitalized costs will be amortized on a straight-line basis once application development is complete based on the estimated life of the asset or the expected term of the contract, as applicable. Application development was ongoing as of September 30, 2022 for all such projects and thus no amortization has been recorded to date.

FAIR VALUE OF FINANCIAL INSTRUMENTS

Fair value is defined as the price that would be received for sale of an asset or paid for transfer of a liability, in an orderly transaction between market participants at the measurement date. GAAP establishes a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to unobservable inputs (Level 3 measurements). These tiers include:

Level 1 – defined as observable inputs such as quoted prices (unadjusted) for identical instruments in active markets.

Level 2 – defined as inputs other than quoted prices in active markets that are either directly or indirectly observable such as quoted prices for similar instruments in active markets or quoted prices for identical or similar instruments in markets that are not active.

Level 3 – defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions, such as valuations derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable.

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In some circumstances, the inputs used to measure the fair value might be categorized within different levels of the fair value hierarchy. In these instances, the fair value measurement is categorized in its entirety in the fair value hierarchy based on the lowest level input that is significant to the fair value measurement.

DERIVATIVE INSTRUMENTS

The Company does not use derivative instruments to hedge exposure to cash flow, market or foreign currency risks. The Company evaluates all of its financial instruments, including stock purchase warrants and forward share purchase obligations, to determine if such instruments are derivatives or contain features that qualify as embedded derivatives, pursuant to ASC 480, “*Distinguishing Liabilities from Equity*,” and ASC 815-15, “*Derivatives and Hedging – Embedded Derivatives*.” The classification of derivative instruments, including whether such instruments should be recorded as liabilities or as equity, is reassessed at the end of each reporting period.

DEBT

The Company issued convertible debentures to related and nonrelated parties, which included original issue discounts, conversion features and detachable warrants, as further discussed in Note 5 to these consolidated financial statements. The detachable warrants represent freestanding, separable equity-linked financial instruments recorded at fair value. The fair value of the detachable warrants is calculated using a Black-Scholes valuation model. The Company elected the fair value option for the convertible debt, which requires recognition at fair value upon issuance and on each balance sheet date thereafter. Changes in the estimated fair value are recognized as non-cash change in fair value of convertible debentures in the consolidated statements of operations. As a result of applying the fair value option, direct costs and fees related to the issuance of the convertible debt were expensed and not deferred.

REVENUE RECOGNITION

The Company’s revenues consist of royalties based on the Company’s epigenetic biomarker research, agents’ commissions earned on the sale, servicing and placement of life insurance policies, and epigenetic testing services sold primarily to research organizations. Revenues are recognized when control of the promised goods or services is transferred to the Company’s customers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those goods or services. To recognize revenues, the Company applies the following five step approach: (i) identify the contract with a customer, (ii) identify the performance obligations in the contract, (iii) determine the transaction price, (iv) allocate the transaction price to the performance obligations in the contract, and (v) recognize revenues when a performance obligation is satisfied. The Company accounts for a contract when it has approval and commitment from all parties, the rights of the parties are identified, payment terms are identified, the contract has commercial substance and collectability of consideration is probable. The Company applies judgment in determining the customer’s ability and intention to pay based on a variety of factors including the customer’s historical payment experience. As of September 30, 2022 and December 31, 2021, the Company had no contract assets or liabilities related to revenue arrangements or transactions.

FOXO Labs — Epigenetic biomarker royalties

The Company has granted a license to Illumina, Inc. (“Illumina”) for the exclusive right to manufacture and sell Infinium mouse methylation arrays using the Company’s research on epigenetic biomarkers in exchange for a royalty on global sales. Illumina provides reporting to the Company so that revenue can be properly recognized as the license is used. Revenue is recorded net as the Company is not considered the principal in the transaction. Epigenetic biomarker royalties are recorded with the FOXO Labs reportable segment. During the third quarter of 2022, the royalty was reduced from 5% to 1.25% in exchange for eliminating a purchase commitment for mouse methylation arrays as further discussed in Note 13.

FOXO LIFE — Life insurance commissions

FOXO Life, LLC, currently an insurance agency, receives insurance commission revenue from the distribution and sale of life insurance policies based on a percentage of the premiums paid by its customers. These commission revenues are substantially recognized at a point in time on the effective date of the associated policies when control of the policy transfers to the client, as well as deferring certain revenues to reflect delivery of services over the contract period and are reported within the FOXO Life reportable segment. Commissions are fixed at the contract effective date and generally are based on a percentage of premiums for insurance coverage. Commission rates vary depending on a variety of factors, including the type of risk being placed, the particular underwriting enterprise’s demand, expected loss experience of the particular risk of coverage, and historical benchmarks surrounding the level of effort necessary for the Company to place and service the insurance contract.

The Company recognizes approximately 80% of commissions earned from the initial life insurance placement on the effective date of the underlying insurance contract. The amount of revenue recognized is based on costs to provide services up and through that effective date, including an appropriate estimate of profit margin on a portfolio basis (a practical expedient as defined in ASC 606, *Revenue from Contracts with Customers*). Based on the proportion of additional services provided in each period after the effective date of the insurance contract, including an appropriate estimate of profit margin, the Company recognizes approximately 15% of commission and fee revenues in the first three months, and the remaining 5% thereafter. These periods may be different than the underlying premium payment patterns of the insurance contracts, but the vast majority of services are fully provided within one year of the insurance contract effective date.

FOXO Labs — Epigenetic biomarker services

FOXO Labs receives epigenetic biomarker services revenue from the performance of lab services. The Company's performance obligation is satisfied when the Company completes the epigenetic biomarker data analysis. At the completion of the biomarker testing, results are reviewed and released to the customer. The Company subsequently bills the organization for the epigenetic biomarker data based on the transaction price, which reflects the amount the Company has rights to under present contracts. Revenue is recognized and reported within the FOXO Labs reportable segment over the life of the contract as work is performed, as FOXO Labs has an enforceable right to payment as the performance is being completed. The Company elected the practical expedient to expense contract costs as incurred related to services provided because the contract term is less than one year.

EQUITY-BASED COMPENSATION

The Company measures all equity-based payments, including options and restricted stock to employees, service providers and nonemployee directors, using a fair-value based method. The cost of services received from employees and nonemployee directors in exchange for awards of equity instruments is recognized in the consolidated statements of operations based on the estimated fair value of those awards on the grant date or reporting date, if required to be remeasured, and amortized on a straight-line basis over the requisite service period. The Black-Scholes valuation model requires the input of assumptions, including the exercise price, volatility, expected term, discount rate, and the fair value of the underlying stock on the date of grant. These inputs are provided at the grant date for an equity classified award and each measurement date for a liability classified award. See Note 8 for additional disclosures regarding the equity-based compensation program.

RESEARCH AND DEVELOPMENT COSTS

Research and development costs are expensed as incurred. Research and development expenses consist primarily of personnel costs and related benefits, as well as costs for outside consultants and professional services.

INCOME TAXES

Deferred taxes are provided on an asset and liability method whereby deferred tax assets are recognized for deductible temporary differences and operating loss and tax credit carryforwards, and deferred tax liabilities are recognized for taxable temporary differences. Temporary differences are the differences between the amounts of assets and liabilities and their tax basis. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. Deferred tax assets and liabilities are adjusted for the effects of changes in tax laws and rates on the date of enactment. The Company is required to analyze its filing positions open to review and believes all significant positions have a "more-likely-than-not" likelihood of being upheld based on their technical merit and accordingly the Company has not identified any unrecognized tax benefits.

NET LOSS PER SHARE

Net loss per share of common stock is calculated by dividing net loss by the weighted average number of shares of common stock outstanding during the period. The Company follows the provisions of ASC Topic 260, *Earnings Per Share* for determining whether outstanding shares that are contingently returnable are included for purposes of calculating net loss per share and determining whether instruments granted in equity-based compensation arrangements are participating securities for purposes of calculating net loss per share. See Note 10, *Net Loss Per Share*.

ASSET ACQUISITIONS

The Company follows the guidance in ASC 805, *Business Combinations* for determining the appropriate accounting treatment for asset acquisitions. When an acquisition does not meet the definition of a business combination because either: (i) substantially all of the fair value of the gross assets acquired is concentrated in a single identifiable asset, or group of similar identified assets, or (ii) the acquired entity does not have an input and a substantive process that together significantly contribute to the ability to create outputs, the company accounts for the acquisition as an asset acquisition and goodwill is not recognized. The cost of the acquisition includes the fair value of consideration transferred and direct transaction costs attributable to the acquisition. Any excess cost over the fair value of the net assets acquired is allocated to the assets acquired based on their relative fair value; however, no excess acquisition cost is allocated to non-qualifying assets including financial assets or indefinite-lived intangible assets subject to fair value impairment testing.

REINSURANCE

The Company is subject to a 100% coinsurance agreement with the seller of MICOA, Security National Life Insurance Company. The amounts reported in the consolidated balance sheets as reinsurance recoverables include amounts billed to reinsurers on losses paid as well as estimates of amounts expected to be recovered from reinsurers on insurance liabilities that have not yet been paid. Reinsurance recoverables on unpaid losses are estimated based upon assumptions consistent with those used in establishing the liabilities related to the underlying reinsured contracts. Insurance liabilities are reported gross of reinsurance recoverables. Management believes reinsurance recoverables are appropriately established. Reinsurance premiums are reflected in income in a manner consistent with the recognition of premiums on the reinsured contracts. Reinsurance does not extinguish the Company's primary liability under the policies written. The Company regularly evaluates the financial condition of the reinsurer and establishes allowances for uncollectible reinsurance recoverables as appropriate.

Revenues on traditional life insurance products subject to this reinsurance agreement consist of direct premiums reported as earned when due. Premium income includes premiums on reinsured policies and is reduced by premiums ceded. Expenses under the reinsurance agreement are also reduced by the amount ceded.

POLICY RESERVES

The Company establishes liabilities for amounts payable under insurance policies, including traditional life insurance and annuities. Generally, amounts are payable over an extended period. Liabilities for future policy benefits of traditional life insurance have been computed by using a net level premium method based upon estimates at the time of issue for investment yields, mortality and withdrawals. These estimates include provisions for experience less favorable than initially expected. Mortality assumptions are based on industry experience expressed as a percentage of standard mortality tables. Annuity liabilities are primarily associated with deferred annuity contracts. The deferred annuity contracts credit interest based on a fixed rate. Liabilities for deferred annuities are included without reduction for potential surrender charges. The liability is equal to accumulated deposits, plus interest credited, less policyholder withdrawals. Reserving assumptions for interest rates, mortality and expense are "locked in" upon the acquisition date for traditional life insurance contracts; significant changes in experience or assumptions may require the Company to provide for extended future losses by establishing premium deficiency reserves. Premium deficiency reserves are determined based on best estimate assumptions that exist at the time the premium deficiency reserve is established and do not include a provision for adverse deviation.

RECENTLY ISSUED ACCOUNTING STANDARDS

In December 2019, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2019-12, Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes ("ASU 2019-12"). ASU 2019-12 removed certain exceptions to the general principles in ASC 740 and clarified and amended existing guidance to improve consistent application. This amended guidance was effective for public entities for interim and annual periods beginning after December 15, 2021. The Company adopted ASU 2019-12 effective January 1, 2022 and it did not have a material impact on the Company's consolidated financial statements.

Other pronouncements issued by the FASB with future effective dates are either not applicable or are not expected to have a material impact on the Company's financial position, results of operations or cash flows.

Note 4 INTANGIBLE ASSETS AND CLOUD COMPUTING ARRANGEMENTS

The components of intangible assets as of September 30, 2022 and December 31, 2021 were as follows:

	September 30, 2022	December 31, 2021
Insurance license	\$ 63	\$ 63
Longevity pipeline	512	75
Underwriting API	839	53
Longevity API	657	-
Intangible assets	\$ 2,071	\$ 191

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The acquisition of MICOA was accounted for as an asset acquisition and an indefinite-lived insurance license intangible asset was recognized for \$63. As this intangible asset has been deemed to have an indefinite life, the asset is not subject to amortization, but is assessed for impairment annually, unless conditions arise that necessitate more frequent evaluation.

During the year ended December 31, 2021, the Company began developing internal use software related to the development of a longevity methylation pipeline for epigenetic data and underwriting application programming interface (“API”). During the nine months ended September 30, 2022, the Company began developing a longevity API to show the results derived from the longevity pipeline. The Company has capitalized costs incurred during the application development stage and has determined that once completed, these intangible assets will have a finite life. Application development on these projects is ongoing as of September 30, 2022. Amortization will be recorded on a straight-line basis when the assets are ready for their intended use.

The components of cloud computing arrangements as of September 30, 2022 and December 31, 2021 were as follows:

	September 30, 2022	December 31, 2021
Digital insurance platform	\$ 2,966	\$ 1,980
Health study tool	1,743	765
Cloud computing arrangements	\$ 4,709	\$ 2,745

The Company entered into a cloud computing arrangement to develop a digital insurance platform and health study tool. Costs related to the application development phase are included in cloud computing arrangements. As of September 30, 2022, the application development phase remains ongoing for the digital insurance platform and health study tool. Amortization will be recorded on a straight-line basis over the expected term of the contract when the assets are ready for their intended use.

The Company’s internal use software and cloud computing arrangements, including the longevity pipeline, underwriting API, longevity API, digital insurance platform and health study tool, include amounts capitalized for interest.

Note 5 DEBT

15% Senior PIK Notes

On September 20, 2022, the Company entered into separate Securities Purchase Agreements with accredited investors pursuant to which the Company issued its 15% Senior PIK Notes (the “Senior PIK Notes”) in the aggregate principal amount of \$3,458. The Company received net proceeds of \$2,918, after deducting fees and expenses of \$540.

The Senior PIK Notes bear interest at 15% per annum, paid in arrears quarterly by payment in kind through increasing the principal amount. The Senior PIK Notes mature on April 1, 2024 (the “Maturity Date”). Commencing on November 1, 2023, the Company is required to pay the holders of the Senior PIK Notes and on each one month anniversary thereof an equal amount until the outstanding principal balance has been paid in full on the Maturity Date. In addition, the Company has agreed that any proceeds from the sale of shares of Class A Common Stock under the ELOC Agreement will be used only for the amortization of the Senior PIK Notes until paid in full. If the Senior PIK Notes are prepaid in the first year, the Company is required to pay the holders in addition to the original principal amount the interest that would have been payable through the first year.

The Company has agreed to no additional equity or debt financing, without the consent of a majority of the holders of the Senior PIK Notes, other than to be utilized for amortization of the Senior PIK Notes. The Company shall not incur other indebtedness, except for certain exempt indebtedness, until such time the Senior PIK Notes are repaid in full, however the Senior PIK Notes are unsecured.

2021 Bridge Debentures

During the first quarter of 2021, the Company entered into separate Securities Purchase Agreements with accredited investors (the “2021 Bridge Investors”), pursuant to which the Company issued its 12.5% Original Issue Discount (“OID”) Convertible Debentures for \$11,812 in aggregate principal (“2021 Bridge Debentures”). The Company received net proceeds of \$9,612 from the sale of the 2021 Bridge Debentures, after an OID of 12.5% and deducting fees and expenses of \$888. The 2021 Bridge Debentures were executed in three tranches, with \$7,883 in aggregate principal issued on January 25, 2021, \$3,367 in aggregate principal issued on February 23, 2021, and \$562 in aggregate principal issued on March 4, 2021. Convertible debentures for \$3,656 in aggregate principal that were issued on January 25, 2021 to the Company’s Chief Executive Officer, Chief Operating Officer, and to an individual who provides consulting services to the Company were presented as related party debt.

Each issuance of 2021 Bridge Debentures included detachable warrants for the right to purchase up to a total of 1,905,853 shares, after giving effect to the conversion of FOXO Class A Common Stock to the Company’s Class A Common Stock. Additional detachable warrants were issued to the underwriter of the issuance of the 2021 Bridge Debentures. The Company concluded the detachable warrants represent freestanding equity-linked financial instruments to be recorded at their fair value on each respective issuance date. The fair value of the detachable warrants was determined using a Black-Scholes valuation model. The additional underwriter warrants were subsequently assigned and surrendered to the Company in exchange for cash payments of approximately \$507 during the second quarter of 2022.

The 2021 Bridge Debentures accrued interest at a rate of 12% per annum and require interest only payments on a quarterly basis. The 2021 Bridge Debentures initially had a term of twelve months, but the Company retained the right to extend the maturity date for each issuance for an additional three-month period, a right which was exercised for each issuance during the first quarter 2022. In the first quarter of 2022, the Company entered into an amendment with the 2021 Bridge Investors (the “2021 Bridge Amendment”). The 2021 Bridge Amendment was executed to provide the Company additional time to finalize the Business Combination. The 2021 Bridge Amendment amended the terms of the 2021 Bridge Debentures to, among other things: (i) permit the Company to undertake another offering of convertible debentures, (ii) allow the Company to extend the maturity dates of the 2021 Bridge Debentures an additional five months following the end of the initial three-month extension period, discussed above, and (iii) implement additional amounts owed on the outstanding balance of the 2021 Bridge Debentures under certain circumstances, the first of which related to the signing of the Merger Agreement and resulted in an increase in the outstanding balance of approximately 135%, which was followed by an additional increase of approximately 145% of the outstanding balance when the 2021 Bridge Debentures remained outstanding at the end of the initial three-month extension period.

2022 Bridge Debentures

During the first and second quarters of 2022, the Company entered into separate Securities Purchase Agreements with accredited investors (the “2022 Bridge Investors”), pursuant to which the Company issued its 10% OID Convertible Debentures for \$30,800 in aggregate principal (“2022 Bridge Debentures”). The Company received net proceeds of \$28,000 from the sale of the 2022 Bridge Debentures, after an OID of 10%. The 2022 Bridge Debentures were issued in three tranches, with \$16,500 in aggregate principal issued on March 1, 2022, \$8,250 in aggregate principal issued on March 3, 2022 and the remaining \$6,050 in aggregate principal issued on April 27, 2022.

The 2022 Bridge Debentures had a term of twelve months from the initial issuance dates and accrued interest at a rate of 12% per annum, of which 12 months was guaranteed. The Company retained the right to extend the maturity date for each issuance for an additional three-month period and incur an extension amount rate of 130% of the outstanding balance. The Company also had the option to prepay the 2022 Bridge Debentures at an amount equal to 120% of the sum of the outstanding principal and unpaid interest thereon if done within 365 days of the original issue date and 130% if during the extension period.

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In connection with the sale of the 2022 Bridge Debentures, FOXO entered into a letter agreement between FOXO and an institutional investor (the “Bridge Investor Side Letter”) pursuant to which FOXO agreed to issue such investor in connection with the Closing, such number of shares of FOXO Class A Common Stock, to be issued immediately prior to the Closing, that would be exchangeable into 350,000 shares of Class A Common Stock. Pursuant to the terms of the Bridge Investor Side Letter, the institutional investor was issued 602,578 shares of FOXO Class A Common Stock which were then exchanged for 350,000 shares of Class A Common Stock.

During the nine months ended September 30, 2022, the Company recognized contractual interest expense of \$1,627 on the 2021 Bridge Debentures, comprised of \$508 for related party holders and \$1,119 for nonrelated party holders. During the three months ended September 30, 2022, the Company recognized contractual interest expense of \$593 on the 2021 Bridge Debentures, comprised of \$181 for related party holders and \$412 for nonrelated party holders. The contractual interest expense on the 2022 Bridge Debentures was included in the fair value of the debt since the amount was known at the time of each issuance. The contractual interest on the 2022 Bridge Debentures as well as for the three months ended September 30, 2022 on the 2021 Bridge Debentures converted to shares of FOXO Class A Common Stock and subsequently exchanged for the Company’s Class A Common Stock as part of the Business Combination.

Note 6 RELATED PARTY TRANSACTIONS

Office Space

The Company subleased its office space from the holder of the FOXO Preferred Stock through May of 2022. The holder of the FOXO Preferred Stock paid all lease costs, including common area maintenance and other property management fees, on the Company’s behalf. These payments were treated as additional capital contributions.

Bridge Debentures

Prior to the conversion of the Bridge Debentures to shares of FOXO Technologies Operating Company Class A and subsequent exchange for Class A Common Stock of the Company at Closing of the Business Combination, there were related party borrowings which are described in more detail in Note 5.

Promissory Note

On June 6, 2022, the Company executed a promissory note, pursuant to which it loaned Delwinds an aggregate principal amount of \$1,160, which represented \$0.035 per share of Delwinds Class A common stock that was not redeemed in connection with the extension of the SPAC’s termination date from June 15, 2022 to September 15, 2022. The Company loaned Delwinds \$387 per month in June 2022, July 2022, and August 2022 prior to Closing of the Business Combination. The outstanding balance on the promissory note eliminated upon consolidation with the Closing of the Business Combination.

Sponsor Loan

In order to finance transaction costs in connection with a Business Combination, the Sponsor or an affiliate of the Sponsor loaned Delwinds funds for working capital. As of September 30, 2022, \$500 was remaining due to the sponsor and is shown as a related party payable in the consolidated balance sheet.

Consulting Agreement

In April 2022, the Company executed a consulting agreement with an individual (the “Consultant”) considered to be a related party of the Company as a result of his investment in the 2021 Bridge Debentures. The agreement has a term of twelve months, over which the Consultant is to provide services that include, but are not limited to, advisory services relating to the implementation and completion of the Business Combination. Following the execution of the agreement, as compensation for such services to be rendered as well as related expenses over the term of the contract, the Consultant was paid a cash fee of \$1,425. The consulting agreement also calls for the payment of an equity fee as compensation for such services. The Company issued 1,500,000 shares of FOXO Class A Common Stock to the Consultant during the second quarter of 2022 to satisfy the equity fee. The Company has determined that all compensation costs related to the consulting agreement, including both cash fees and the equity fee, represent remuneration for services to be rendered evenly over the contract term. Thus, all such costs were initially recorded at fair value as prepaid consulting fees in the consolidated balance sheet and are being recognized as selling, general and administrative expenses in the consolidated statement of operations on a straight-line basis over the term of the contract. For the three and nine months ended September 30, 2022, \$2,081 and \$3,568 in expenses, respectively, were recognized related to the consulting agreement.

Note 7 STOCKHOLDERS' EQUITY

The unaudited consolidated statements of stockholders' equity (deficit) reflects the Reserve Recapitalization. In connection with the Business Combination, the Company adopted the second amended and restated certificate of incorporation (the "Amended and Restated Company Charter") to, among other things, increased the total number of authorized shares of all capital stock, par value \$0.0001 per share, to 510,000,000 shares, consisting of (i) 500,000,000 shares of Class A Common Stock and (ii) 10,000,000 shares of preferred stock.

Also in connection with the Business Combination, 632,500 shares of Class B Common Stock were converted, on a one-to-one basis, into shares of Class A Common Stock, and as of September 30, 2022, there were no shares of Class B Common Stock issued or outstanding.

ELOC Agreement

Under the ELOC Agreement, the Company has the right to sell to the Cantor Investor up to \$40,000 in shares of Class A Common Stock for a period until the first day of the month next following the 36-month anniversary of when the SEC has declared effective a registration statement covering the resale of such share of Class A Common Stock or until the date on which the facility has been fully utilized, if earlier. The purchase price of the shares of Class A Common Stock will be 97% of the volume weighted average price per share ("VWAP") of the Class A Common Stock during the applicable purchase date on which the Company has timely delivered written notice to the Cantor Investor directing it to purchase shares of Class A Common Stock under the ELOC Agreement.

The ELOC Agreement provides for a commitment fee (the "Cantor Commitment Fee") payable to the Cantor Investor at Closing for its irrevocable commitment to purchase shares of Class A Common Stock upon the terms and conditions of the ELOC Agreement. The Cantor Commitment fee was paid by the issuance of 190,476 shares of Class A Common Stock and is recorded in selling, general and administrative expenses in the consolidated statement of operations.

The Company has the right to terminate the ELOC Agreement at any time, at no cost or penalty, upon 10 trading days' prior written notice. Additionally, the Cantor Investor has the right to terminate the ELOC Agreement on the seventh trading day following the Closing if the total market capitalization of the Company is less than \$100 million as of such date.

Preferred Stock

The Amended and Restated Company Charter authorizes the Company to issue 10,000,000 shares of preferred stock with such designations, voting and other rights and preferences as may be determined from time to time by the Company's board of directors. As of September 30, 2022, there were no shares of preferred stock issued or outstanding.

Warrants

Public Warrants and Private Placement Warrants

The Company issued 10,062,500 common stock warrants in connection with Delwinds' initial public offering (the "IPO") (the "Public Warrants"). Simultaneously with the closing of the IPO, Delwinds consummated the private placement of 316,250 common stock warrants (the "Private Placement Warrants").

Public Warrants may only be exercised for a whole number of shares. No fractional warrants will be issued upon separation of the Units and only whole warrants will trade. Each Public Warrant entitles the holder to purchase one share of Class A Common Stock at a price of \$11.50 per share, subject to adjustment. The Public Warrants become exercisable 30 days after the completion of a Business Combination. The Public Warrants will expire five years after the completion of a Business Combination or earlier upon redemption or liquidation.

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The Company is not obligated to deliver any shares of Class A Common Stock pursuant to the exercise of a warrant and has no obligation to settle such warrant exercise unless a registration statement under the Securities Act with respect to the shares of Class A Common Stock underlying the warrants is then effective and a prospectus relating thereto is current, subject to the Company satisfying its obligations with respect to registration. No warrant will be exercisable, and the Company will not be obligated to issue shares of Class A Common Stock upon exercise of a warrant unless Class A Common Stock issuable upon such warrant exercise has been registered, qualified or deemed to be exempt under the securities laws of the state of residence of the registered holder of the warrants.

The Company has agreed that as soon as practicable will file with the SEC a registration statement covering the shares of Class A Common Stock issuable upon exercise of the warrants. If the registration statement covering the shares of Class A Common Stock issuable upon exercise of the warrants is not effective by the 60th business day after the closing of a Business Combination, warrant holders may, until such time as there is an effective registration statement and during any period when the Company will have failed to maintain an effective registration statement, exercise warrants on a “cashless basis” in accordance with Section 3(a)(9) of the Securities Act or another exemption. Notwithstanding the foregoing, if a registration statement covering the Class A Common Stock issuable upon exercise of the warrants is not effective within a specified period following the consummation of the Business Combination, warrant holders may, until such time as there is an effective registration statement and during any period when the Company shall have failed to maintain an effective registration statement, exercise warrants on a cashless basis pursuant to the exemption provided by Section 3(a)(9) of the Securities Act, provided that such exemption is available. If that exemption, or another exemption, is not available, holders will not be able to exercise their warrants on a cashless basis.

Once the warrants become exercisable, the Company may redeem the Public Warrants:

- in whole and not in part;
- at a price of \$0.01 per warrant;
- upon not less than 30 days’ prior written notice of redemption given after the warrants become exercisable; and
- if, and only if, the reported last sale price of the Company’s Class A Common Stock equals or exceeds \$18.00 per share for any 20 trading days within a 30-trading day period commencing once the warrants become exercisable and ending three business days before the Company sends the notice of redemption to the warrant holders.

If and when the warrants become redeemable by the Company, the Company may not exercise its redemption right if the issuance of shares of common stock upon exercise of the warrants is not exempt from registration or qualification under applicable state blue sky laws or the Company is unable to effect such registration or qualification.

If the Company calls the Public Warrants for redemption, management will have the option to require all holders that wish to exercise the Public Warrants to do so on a “cashless basis”. The exercise price and number of shares of Class A common stock issuable upon exercise of the warrants may be adjusted in certain circumstances including in the event of a stock dividend, or recapitalization, reorganization, merger or consolidation. However, the warrants will not be adjusted for issuance of Class A Common Stock at a price below its exercise price. Additionally, in no event will the Company be required to net cash settle the warrants.

The Private Placement Warrants are identical to the Public Warrants underlying the Units sold in the Initial Public Offering, except that the Private Placement Warrants and the Class A Common Stock issuable upon the exercise of the Private Placement Warrants are not transferable, assignable or salable until 30 days after the completion of a Business Combination, subject to certain limited exceptions. Additionally, the Private Placement Warrants are exercisable on a cashless basis and be non-redeemable so long as they are held by the initial purchasers or their permitted transferees. If the Private Placement Warrants are held by someone other than the initial purchasers or their permitted transferees, the Private Placement Warrants will be redeemable by the Company and exercisable by such holders on the same basis as the Public Warrants.

Assumed Warrants

At Closing, the Company assumed common stock warrants to purchase FOXO Class A Common Stock and exchanged such common stock warrants for common stock warrants to purchase 1,905,853 shares of the Company's Class A Common Stock. Each Assumed Warrant entitles the holder to purchase one share of Class A Common Stock at a price of \$6.21 per share, subject to adjustment. The Assumed Warrants are exercisable over a three-year period from the date of issuance.

Shares Payable

The Company entered into a termination agreement with a vendor associated with the Business Combination. The Company agreed to provide 300,000 shares in connection with the agreement which have not been issued as of September 30, 2022. The obligation to issue shares is recorded in the consolidated balance sheet as shares payable.

Note 8 EQUITY-BASED COMPENSATION

Management Contingent Share Plan

On September 14, 2022, the stockholders of the Company approved the FOXO Technologies Inc. Management Contingent Share Plan (the "Management Contingent Share Plan"). The purposes of the Management Contingent Share Plan are to (a) secure and retain the services of certain key employees and service providers and (b) incentivize such key employees and service providers to exert maximum efforts for the success of the Company and its affiliates.

The number of shares of Class A Common Stock that may be issued under the Management Contingent Share Plan is 9,200,000 shares, subject to equitable adjustment for shares splits, share dividends, combinations, recapitalizations and the like after the Closing, including to account for any equity securities into which such shares are exchanged or converted.

The Management Contingent Share Plan provides for the grant of restricted share awards of Class A Common Stock. All of the shares of Class A Common Stock issued to a FOXO employee at the Closing were issued pursuant to a "Restricted Share Award," the terms of which shall apply to all shares issued to such recipient. For the purposes of the Management Contingent Share Plan, shares of restricted Class A Common Stock issued in accordance with such plan will be considered "vested" when they are no longer subject to forfeiture in accordance with the terms of such plan. Each restricted share award issued under the Management Contingent Share Plan will be subject to both a time-based vesting component and a performance-based vesting component.

Time-Based Vesting

Each restricted share award shall be subject to three service-based vesting conditions:

- a) Sixty percent (60%) of a participant's restricted share award will become vested on the third anniversary of the Closing if the participant is still employed by the company on such date (and has been continuously employed by the company from the date of grant through such vesting date).
- b) An additional twenty percent (20%) of a participant's restricted share award will become vested on the fourth anniversary of the Closing if the participant is still employed by the company on such date (and has been continuously employed by the company from the date of grant through such vesting date).
- c) The final twenty percent (20%) of a participant's restricted share award will become vested on the fifth anniversary of the Closing if the participant is still employed by the company on such date (and has been continuously employed by the company from the date of grant through such vesting date).

Performance-Based Vesting

In addition, to time-based vesting, one-third of each restricted share award may only become vested upon satisfaction of each of the following three performance-based conditions:

1. The operational launch of digital online insurance products by FOXO LIFE Insurance Company (or its functional equivalent under a managing general agency relationship with a life insurance company), with at least 100 policies sold, within one year following the Closing;
2. The signing of a commercial research collaboration agreement with an insurance company or reinsurance company for saliva-based epigenetic biomarkers in life insurance underwriting within two years following the Closing; and
3. The implementation of saliva-based epigenetic biomarkers in life insurance underwriting by the Company, with at least 250 policies sold using such underwriting, within two years following the Closing.

On July 6, 2022, the Company executed a Memorandum of Understanding and Pilot Research Agreement (the “Agreement”) with both a life insurance carrier and a reinsurer. The purpose of the Agreement is to conduct a parallel run study, using a minimum of 2,500 participants, comparing traditional medical underwriting results to those obtained through use of the Company’s saliva-based epigenetic biomarker technology. The Agreement is intended to assess the value of the Company’s technology for a saliva-based next-generation underwriting protocol and will help determine whether the parties will later enter into a commercial agreement. The Agreement commenced in the third quarter of 2022 and will continue until the sooner of project completion, project termination, or the Company and the life insurance carrier entering into a commercial agreement for the scaled rollout of FOXO’s technology in the life insurance carrier’s underwriting processes. Accordingly, the Company has met the commercial research collaboration agreement performance condition and has begun recognizing expense upon completion of the Business Combination. For both the three and nine months ended September 30, 2022 the Company has recognized \$289 of expense related to the vesting of the Management Contingent Share Plan based on the fair value at grant date of \$7.81 per share.

Service Based-Conditions

The Management Contingent Share Plan provides that in the event of the death, disability, or termination without cause of the CEO, service-based conditions will not apply.

Forfeiture of Restricted Share Awards

If a performance-based condition is not achieved within the specified timeframe, then the one-third portion of each restricted share award that is associated to that performance-based condition will be permanently forfeited. The Committee shall be solely responsible for monitoring and determining whether or not any performance-based condition is achieved, and any such determination shall be final and conclusive.

Any restricted stock awards that fail to vest due to a time-based vesting condition not being satisfied will be forfeited by the participant and the shares associated with that award will be permanently forfeited and cancelled.

Upon closing of the Business Combination 9,200,000 shares were issued and 9,175,000 remained outstanding as of September 30, 2022 under the Management Contingent Share Plan.

2022 Equity Incentive Plan

On September 14, 2022, the stockholders of the Company approved the FOXO Technologies Inc. 2022 Equity Incentive Plan (the “2022 Plan”). The 2022 Plan permits the grant of equity-based awards to employees, directors and consultants. The number of shares of Class A Common Stock that may be issued under the 2022 Plan is 3,286,235.

As of September 30, 2022, no awards were granted under the 2022 Plan.

2020 Stock Incentive Plan

FOXO Technologies Operating Company adopted the 2020 Stock Incentive Plan (the “2020 Plan”) to attract, retain, incentivize and reward qualified employees, nonemployee directors and consultants. Immediately prior to Closing, vested and unvested stock options were outstanding to purchase 5,105,648 shares of FOXO Class A Common Stock. At Closing, the Combined Company assumed the stock options granted pursuant to the 2020 Plan to purchase FOXO Class A Common Stock and exchanged such stock options to purchase 2,965,500 shares of the Company’s Class A Common Stock at a weighted-average exercise price of approximately \$7.13 per share. All remaining terms of the Assumed Options were unchanged.

Note 9 FORWARD PURCHASE AGREEMENT

The Company entered into a Forward Share Purchase Agreement with Meteora Capital Partners and its affiliates (collectively, “Meteora”) for a forward purchase transaction. Prior to the Closing, Meteora agreed not to redeem 2,873,728 shares of Class A Common Stock (the “Meteora Shares”) in connection with the Business Combination. Meteora has the right to sell the Meteora Shares in the open market and on the fifteen (15) month anniversary of the Closing of the Business Combination (the “Put Date”) may obligate the Company to purchase the shares from Meteora should any not have been sold in the open market.

In connection with the Forward Share Purchase Agreement, the Company and Meteora entered into an escrow agreement (the “Escrow Agreement”) where \$29,135, based on the Meteora Shares and the corresponding redemption price from the Business Combination, was deposited into escrow by the Company (the “Prepayment Amount”). There are a few scenarios in which the Forward Purchase Agreement can be settled either before or on the Put Date:

- i. At any time prior to the Put Date, Meteora may sell the Meteora Shares to any third party following the Business Combination but before the Put Date in the open market. If Meteora sells any shares prior to the Put Date, an amount equal to the product of the number of Meteora Shares sold multiplied by 92.5% of a reset price (the “Reset Price”) will be released from the Escrow Account and paid to the Company (the “Open Market Sale Payment”), and an amount equal to the product of (a) the portion of the Meteora Shares that Meteora sells in the open market and (b) the difference between the (i) the per share escrow amount and (ii) the Open Market Sale Payment, will be released from the Escrow Account to Meteora. The Reset Price shall initially be \$10.00 and, thereafter, shall be subject to weekly adjustments during the term of the Forward Purchase Agreement based on the then current Reset Price and volume weighted average trading prices (“VWAP”) of the Company’s Class A Common Stock for the immediately preceding week.
- ii. On the Put Date, if any of the Meteora Shares subject to the Forward Purchase Agreement remain unsold, Meteora is entitled to a) the product of the unsold Meteora Shares multiplied by the Redemption Price which will be released from the Escrow Account, and b) the Company will be required to transfer to Meteora maturity consideration equal to the product of \$0.05 per Meteora Share sold to the Company and the number of days between the closing of the Business Combination and the Put Date divided by 30 days.
- iii. The Put Date may be accelerated and occur prior to the fifteen month anniversary of the Closing of the Business Combination upon the occurrence of certain events and circumstances set forth in the Forward Share Purchase Agreement, including a) if the VWAP of the Company’s Class A Common Stock falls below \$2.50 per share during any 20 of 30 consecutive trading days, b) if the Forward Purchase Agreement is early terminated, or c) if the Company’s Class A Common Stock is delisted from a national exchange. If the Put Date is accelerated, the Company would follow the maturity consideration described above.

The Company has determined that the Prepayment Amount is collateral with the amount recorded in the unaudited consolidated balance sheet within forward purchase collateral. In accordance with ASC 480, Distinguishing Liabilities from Equity, , the Company has determined that Meteora’s ability to require the Company to repurchase shares in certain situations is accounted for as a freestanding derivative. The derivative, referred to as the forward purchase put derivative is recorded as a liability on the Company’s unaudited consolidated balance sheet. Additionally, the Company has recorded a derivative based on the amount of collateral that may be provided to Meteora and has recorded it as a liability, referred to as the forward purchase collateral derivative, on the Company’s unaudited consolidated balance sheet. The Company has prepared fair value measurements for both the forward purchase derivatives as of the Closing and September 30, 2022, which is described in Note 11. The Company remeasures the fair value of the forward purchase derivatives each reporting period and the change in fair value is recorded in current earnings.

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Note 10 NET LOSS PER SHARE

The Business Combination was accounted for as a reverse recapitalization by which FOXO Technologies Operating Company issued equity for the net assets of Delwinds accompanied by a recapitalization. Earnings per share has been recast for all historical periods to reflect the Company's capital structure for all comparative periods.

The Company excluded the effect of the 9,175,000 Management Contingent Shares outstanding as of September 30, 2022 from the computation of basic net loss per share in three and nine months ended September 30, 2022, as the conditions to trigger the vesting of the Management Contingent Shares had not been satisfied as of September 30, 2022.

The Company excluded the effect of the Public Warrants, the Private Placement Warrants, the Assumed Options, and Assumed Warrants from the computation of diluted net loss per share in the three and nine months ended September 30, 2022 as their inclusion would have been anti-dilutive because the Company was in a loss position for such periods. The Assumed Options, the Assumed Warrants, and the 2021 Bridge Debentures were excluded from the three and nine months ended September 30, 2021 as their inclusion would have been anti-dilutive. For the three and nine months ended September 30, 2022, the 2021 Bridge Debentures and 2022 Bridge Debentures were included in basic and diluted net loss per share from the date of closing as the Bridge Debentures were converted into FOXO Class A Common Stock and subsequently exchanged for the Company's Class A Common Stock upon completion of the Business Combination.

The following table sets forth the calculation of basic and diluted earnings per share for the periods indicated based on the weighted average number of shares outstanding during the respective periods:

	Three Months Ended September 30, 2022	Three Months Ended September 30, 2021	Nine Months Ended September 30, 2022	Nine Months Ended September 30, 2021
Net loss available to common shares	\$ (41,026)	\$ (27,241)	\$ (76,932)	\$ (37,614)
Basic and diluted weighted average number of Class A Common Stock	6,122	5,826	5,975	5,817
Basic and diluted net loss available to Class A Common Stock	\$ (6.70)	\$ (4.68)	\$ (12.88)	\$ (6.47)

The following Class A common stock equivalents have been excluded from the computation of diluted net loss per common share as the effect would be antidilutive and reduce the net loss per common stock (shares in thousands):

	As of September 30,	
	2022	2021
Series A preferred stock	-	4,646,698
2021 Bridge Debentures	-	6,759,642
2022 Bridge Debentures	-	7,810,509
Public and private warrants	10,378,750	-
Assumed warrants	1,905,853	1,905,853
Assumed options	2,965,500	2,965,500
Total antidilutive shares	15,250,103	24,088,202

Note 11 FAIR VALUE MEASUREMENTS

The following table presents information about the Company's assets and liabilities that are measured on a recurring basis as of September 30, 2022 and December 31, 2021 and indicates the fair value hierarchy of the valuation techniques that the Company utilized to determine such fair value.

Fair Value Measurements Using Inputs Considered as:				
	Fair Value	Level 1	Level 2	Level 3
September 30, 2022				
Liabilities:				
Warrant liability	\$ 1,038	\$ 1,006	\$ 32	\$ -
Forward purchase collateral derivative	27,378	-	-	27,378
Forward purchase put derivative	1,284	-	-	1,284
Total liabilities	\$ 29,700	\$ 1,006	\$ 32	\$ 28,662
December 31, 2021				
Liabilities:				
2021 Bridge Debentures	\$ 32,203	\$ -	\$ -	\$ 32,203
Total liabilities	\$ 32,203	\$ -	\$ -	\$ 32,203

Warrant Liability

The Public Warrants and Private Placement Warrants are accounted for as liabilities in accordance with ASC 815-40 and are presented within warrant liability on the Company's balance sheet. The warrant liability is measured at fair value on the date of the Closing and on a recurring basis, with any changes in the fair value presented as change in fair value of warrant liability in the Company's statement of operations.

Measurement at Closing and Subsequent Measurement

The Company established the fair value for the Public and Private Placement Warrants on the date of the Closing, and subsequent fair value as of September 30, 2022. The measurement of the Public Warrants as of Closing and as September 30, 2022 is classified as Level 1 due to the use of an observable market quote in an active market under ticker FOXO-WT. As the transfer of the Private Placement Warrants to anyone outside of a small group of individuals who are permitted transferees would result in the Private Placement Warrants having substantially the same terms as the Public Warrants, the Company determined the fair value of each Private Placement Warrant is equivalent to that of each Public Warrant, with an insignificant adjustment for short-term marketability restrictions. As such, the Private Placement Warrants are classified as Level 2.

Forward Purchase Derivatives

The Company established the fair value of both the forward purchase put derivative and the forward purchase collateral derivative on the date of the Closing, and subsequent fair value as of September 30, 2022 with amounts included in net income as a change in fair value of forward purchase put derivative and a change in fair value of forward purchase collateral derivative. The estimated fair value of the forward purchase derivatives was calculated using a Monte Carlo simulation and used significant unobservable inputs. Future estimates of trading prices were based on volatility assumptions that impact the estimated Reset Price and Meteora's corresponding sales in the open market. The forward purchase derivatives are classified as Level 3 due to the use of unobservable inputs. For additional information on the forward purchase derivatives see Note 9.

Bridge Debentures

The Company elected the fair value option to account for both the 2021 Bridge Debentures and 2022 Bridge Debentures (collectively, the "Bridge Debentures"). The Bridge Debentures are measured at fair value on a recurring basis given the Company's election of the fair value option for measuring such liabilities. The fair value of the Bridge Debentures is determined based on significant unobservable inputs including the likelihood of voluntary or mandatory conversion, and the estimated date at which conversion will take place, which causes them to be classified as a Level 3 measurement within the fair value hierarchy. The recorded fair value of the Bridge Debentures and the non-cash change in fair value recorded in the consolidated statements of operations could change materially if differing inputs and assumptions were to be utilized. However, the valuations used assumptions and estimates the Company believes would be made by a market participant in making the same valuations as of the issuance date and each subsequent reporting period.

The Company elected the fair value option to better depict the ultimate liability associated with the Bridge Debentures, including all features and embedded derivatives in the Securities Purchase Agreements. The Bridge Debentures accounted for under the fair value option election represented debt host financial instruments containing certain embedded features that would otherwise be required to be bifurcated from the debt host and recognized as separate derivative liabilities subject to initial and subsequent periodic fair value measurement in accordance with U.S. GAAP. When the fair value option election is applied to financial liabilities, bifurcation of embedded derivatives is not required, and the financial liability in totality is recorded at its issue-date estimated fair value and then subsequently remeasured at estimated fair value on a recurring basis as of each balance sheet date thereafter. Upon remeasurement, the portion of a change in estimated fair value attributable to a change in instrument-specific credit risk is recognized as a component of other comprehensive income (loss) and the remaining amount of a change in estimated fair value is to be recognized in the consolidated statements of operations. As a result of electing the fair value option, direct costs and fees related to the issuance of the Bridge Debentures were expensed and not deferred.

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For all reporting periods during the year ended December 31, 2021, the estimated fair value of the 2021 Bridge Debentures was calculated using a Monte Carlo simulation, which incorporated significant unobservable inputs such as the likelihood of term extension and voluntary or mandatory conversion. Additionally, the December 31, 2021 used an implied borrowing rate of 52.0% as an input to the fair value measurement. None of the change in fair value for the was deemed to be attributable to instrument-specific credit risk and thus the full amount of such change was recognized in the consolidated statements of operations.

During 2022, prior to conversion, the estimated fair value of the Bridge Debentures was calculated using a probability-weighted expected return model. This change in valuation methodology was driven by the execution of the Merger Agreement on February 24, 2022, which made the ultimate value to holders of the Bridge Debentures upon voluntary or mandatory conversion clearer. Prior to conversion, the Bridge Debentures were recorded at their ultimate fair value based on purchase consideration attributed to the outstanding principal and using a probability-weighted expected return model. At conversion, the Company was able to determine the fair value of both the 2021 Bridge Debentures and 2022 Bridge Debentures based on the completion of the Business Combination. Immediately prior to the Closing of the Business Combination, the 2021 Bridge Debentures and 2022 Bridge Debentures were converted to 6,759,642 and 7,810,509 shares of FOXO Technologies Operating Company Class A common stock, respectively and fair value measurements were no longer performed as the debt was no longer outstanding. For further details on this conversion, stockholders' equity of the Combined Company, and the Business Combination, refer to Notes 1, 3, 5, and 7. None of the change in estimated fair value of the Bridge Debentures from December 31, 2021 to conversion was deemed to be attributable to instrument-specific credit risk and thus the full amount of such change was recognized in the consolidated statements of operations.

The following tables provide a summary of changes in Level 3 liabilities measured at fair value on a recurring basis:

	2022 Bridge Debentures	2021 Bridge Debentures	Total
Balance, June 30, 2021	\$ -	\$ 12,819	\$ 12,819
Losses included in net loss	-	22,571	22,571
Balance, September 30, 2021	<u>\$ -</u>	<u>\$ 35,390</u>	<u>\$ 35,390</u>

	2022 Bridge Debentures	2021 Bridge Debentures	Forward Purchase Put Derivative	Forward Purchase Collateral Derivative	Total
Balance, June 30, 2022	\$ 46,733	\$ 37,953	\$ -	\$ -	\$ 84,686
Losses included in net loss	2,810	887	-	-	3,697
Balance at Conversion	49,543	38,840	-	-	88,383
Transfer out	(49,543)	(38,840)	-	-	(88,383)
Losses included in net loss	-	-	1,284	27,378	28,662
Balance, September 30, 2022	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 1,284</u>	<u>\$ 27,378</u>	<u>\$ 28,662</u>

	2022 Bridge Debentures	2021 Bridge Debentures	Total
Balance, December 31, 2020	\$ -	\$ -	\$ -
Debt Issuance	-	10,500	10,500
Losses included in net loss	-	24,890	24,890
Balance, September 30, 2021	<u>\$ -</u>	<u>\$ 35,390</u>	<u>\$ 35,390</u>

	2022 Bridge Debentures	2021 Bridge Debentures	Forward Purchase Put Derivative	Forward Purchase Collateral Derivative	Total
Balance, December 31, 2021	\$ -	\$ 32,203	\$ -	\$ -	\$ 32,203
Debt Issuance	28,000	-	-	-	28,000
Losses included in net loss	21,543	6,637	-	-	28,180
Balance at Conversion	49,543	38,840	-	-	88,383
Transfer out	(49,543)	(38,840)	-	-	(88,383)
Losses included in net loss	-	-	1,284	27,378	28,662
Balance, September 30, 2022	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 1,284</u>	<u>\$ 27,378</u>	<u>\$ 28,662</u>

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Note 12 BUSINESS SEGMENT

The Company manages and classifies its business into two reportable business segments:

- FOXO Labs is commercializing proprietary epigenetic biomarker technology to be used for underwriting risk classification in the global life insurance industry. The Company's innovative biomarker technology enables the adoption of new saliva-based health and wellness biomarker solutions for underwriting and risk assessment. The Company's research demonstrates that epigenetic biomarkers, collected from saliva, provide measures of individual health and wellness for the factors used in life insurance underwriting traditionally obtained through blood and urine specimens.
- FOXO Life is redefining the relationship between consumers and insurer by combining life insurance with a dynamic molecular health and wellness platform. FOXO Life seeks to transform the value proposition of the life insurance carrier from a provider of mortality risk protection products to a partner supporting its customers' healthy longevity. FOXO Life's multi-omic health and wellness platform will provide life insurance consumers with valuable information and insights about their individual health and wellness to support longevity.

FOXO Labs generates revenue by collecting epigenetic services royalties. FOXO Life generates revenue from the sale of life insurance products. Asset information is not used by the Chief Operating Decision Maker ("CODM") or included in the information provided to the CODM to make decisions and allocate resources.

The primary income measure used for assessing segment performance and making operating decisions is earnings before interest, income taxes, depreciation, amortization, and equity-based compensation ("Segment Earnings"). The segment measure of profitability also excludes corporate and other costs, including management, IT, overhead costs and certain other non-cash charges or benefits, such as any non-cash changes in fair value.

Summarized below is information about the Company's operations for the three and nine months ended September 30, 2022 and September 30, 2021 by business segment:

	Three Months Ended September 30,				Nine Months Ended September 30,			
	Revenue		Earnings		Revenue		Earnings	
	2022	2021	2022	2021	2022	2021	2022	2021
FOXO Labs	\$ 7	\$ 23	\$ (499)	\$ (1,632)	\$ 71	\$ 67	\$ (1,952)	\$ (4,268)
FOXO Life	7	8	(1,157)	(831)	22	26	(3,070)	(1,667)
	14	31	(1,656)	(2,463)	93	93	(5,022)	(5,935)
Corporate and other (a)			(38,946)	(24,465)			(70,660)	(30,854)
Interest expense			(424)	(313)			(1,250)	(825)
Total	\$ 14	\$ 31	\$ (41,026)	\$ (27,241)	\$ 93	\$ 93	\$ (76,932)	\$ (37,614)

(a) Corporate and other includes equity-based compensation, including the consulting agreement and Cantor Commitment Fee, expense of \$3,866 and \$42 as well as depreciation expense of \$74 and \$25 for the three months ended September 30, 2022 and 2021, respectively. Corporate and other includes equity-based compensation, including the consulting agreement and Cantor Commitment Fee, expense of \$5,556 and \$8 as well as depreciation expense of \$159 and \$71 for the nine months ended September 30, 2022 and 2021, respectively. The three months ended September 30, 2022 and 2021 included \$31,010 and \$22,571 for the changes in fair value of convertible debentures, warrant liability, and forward purchase derivatives. The nine months ended September 30, 2022 and 2021 also included \$55,493 and \$24,890 for the changes in fair value of convertible debentures, warrant liability, and forward purchase derivatives. See Notes 5, 6, 7, 9 and 11 for additional information.

Note 13 COMMITMENTS, CONTINGENCIES, AND SPONSORED RESEARCH

The Company is a party to various vendor and license agreements and sponsored research arrangements in the normal course of business that create commitments and contractual obligations.

Vendor Agreements

The Company entered into an agreement to purchase supplies from an unrelated party in December 2019. The agreement required a purchase of 10,000 units over the 3-year term of the contract. The Company had \$788 remaining on its purchase obligation and in July of 2022, the Company amended the vendor agreement under which it was previously committed to purchasing 10,000 units of supplies over a three-year term. That amendment resulted in the elimination of the \$788 commitment remaining under the agreement in exchange for a reduced royalty rate to be received by the Company on future sales of infinium mouse methylation arrays.

License Agreements

In April 2017, the Company entered into a license agreement with The Regents of University of California (the “Regents”) to develop and commercialize the DNA Methylation Based Predictor of Mortality. The agreement remains in effect through the life of the Regents’ patents related to this license agreement. The Company is required to pay license maintenance fees on each anniversary date of agreement execution. The Company is liable to the Regents for an earned royalty of net sales of licensed products or licensed methods.

In February 2021, the Company entered into another license agreement with the Regents for GrimAge and PhenoAge technology. The agreement remains in effect through the life of the Regents’ patents related to this license agreement. In consideration of the license and rights granted under the license agreement, the Company made a one-time cash payment and will make maintenance payments on each anniversary of the Agreement. The Company will pay the Regents for each assay internally used and a royalty on external net sales. Additionally, the contract includes development milestones and fees related to achieving commercial sales and a comparative longitudinal study of health outcomes.

Harvard University’s Brigham and Women’s Hospital

During the second quarter of 2022, the Company entered into an agreement and license option with The Brigham and Women’s Hospital, Inc. (the “Hospital”) to conduct epigenetic profiling of associations between epigenetic aging and numerous behavioral, lifestyle, dietary and clinical risk factors, as well as major morbidity and mortality outcomes. The Company refers to this study as VECTOR. Specific aims of this research include: (i) to examine epigenetic association with lifestyle and dietary factors, including smoking history, physical activity, body mass index, alcohol intake, dietary patterns, dietary supplement use, and aspirin used; (ii) to examine epigenetic association with major morbidity including cardiovascular disease, cancer, type 2 diabetes, hypertension, liver disease, renal disease, and respiratory disease, (iii) to conduct an National Death Index Plus search to update and extend mortality follow up on Harvard University’s Physicians’ Health Study (“PHS”), and (iv) utilizing the newly expanded PHS mortality follow-up data, to examine epigenetic association with lifespan, longevity, and mortality. In addition, the epigenetic resources contained in the PHS studies have the potential to contribute and extend to large meta-analyses and validation studies of epigenetic association and understanding of these factors and their impact on human aging acceleration.

The Company is responsible for payments up to \$849 related to the agreement, half of which was paid upon contract execution during the second quarter of 2022. Remaining payments are due as follows: (i) 20% upon the enrollment of the first patient, (ii) 20% upon the enrollment of the final patient and (iii) 10% upon lab receipt of shipments for all initially planned assays. Costs associated with the clinical trial agreement are being recorded as research and development expenses in the consolidated statements of operations.

U.S. Department of Health and Human Services

In June 2020, the Company entered into a cooperative research and development agreement (“CRADA”) with the U.S. Department of Health and Human Services (“HHS”) and agencies of U.S. Public Health Services within the HHS, as well as the National Institute on Deafness and other Communication Disorders (“NIDCD”), to enhance understanding of epigenetic gene regulation in Recurrent Respiratory Papillomatosis (“RRP”).

Under the CRADA agreement, the Company is granted an exclusive option to elect an exclusive or nonexclusive commercialization license, with terms of the license that reflect the nature of the invention, the relative contributions of the respective parties, a plan for the development and marketing, and the costs of subsequent research and development needed to bring the invention to market. The Company is responsible for payment of all fees related to CRADA patents.

As part of the CRADA agreement, the Company agreed to provide funding totaling \$200 under the two-year term of the agreement. The Company recognized \$29 and \$25 in sponsored research expenses related to this agreement during the three months ended September 30, 2022 and 2021, respectively, and \$75 and \$29 in sponsored research expenses related to this agreement during the nine months ended September 30, 2022 and 2021, respectively. These amounts are recorded within research and development expenses in the consolidated statements of operations.

The Children's Hospital of Philadelphia

In February 2021, the Company entered into a sponsored research agreement with The Children's Hospital of Philadelphia ("CHOP") to develop new methods and software implementations for the processing and analysis of Illumina Infinium DNA methylation technology, including the Infinium EPIC+ Human Array and the Infinium mouse methylation array. The intent of the research agreement is to create open-source software that will be able to import data from any Infinium DNA methylation array and conduct state-of-the-art processing and quality control of the data in an automated fashion.

In consideration for sponsoring the research, the Company shall have a first and exclusive option to negotiate for a revenue-bearing exclusive license to any patent rights or other intellectual property rights for CHOP intellectual property or CHOP's interests in any joint intellectual property. Additionally, the Company agrees to reimburse CHOP for fees relating to maintaining the patents.

As part of the CHOP Agreement, the Company will provide funding totaling \$311 over a two-year period, commencing February 1, 2021. The Company recognized \$40 and \$38 in sponsored research expenses during the three months ended September 30, 2022 and 2021, respectively, and \$119 and \$101 in sponsored research expenses during the nine months ended September 30, 2022 and 2021, respectively. These amounts are recorded within research and development expenses in the consolidated statements of operations.

Parallel Run Study

During the third quarter of 2022, the Company executed a Memorandum of Understanding and Pilot Research Agreement (the "Agreement") with both a life insurance carrier and a reinsurer. The purpose of the Agreement is to conduct a parallel run study, using a minimum of 2,500 participants, comparing traditional medical underwriting results to those obtained through use of the Company's saliva-based epigenetic biomarker technology. The Agreement is intended to assess the value of the Company's technology for a saliva-based next-generation underwriting protocol and will help determine whether the parties will later enter into a commercial agreement. The Agreement commenced in the third quarter of 2022 and will continue until the sooner of project completion, project termination, or the Company and the life insurance carrier entering into a commercial agreement for the scaled rollout of FOXO's technology in the life insurance carrier's underwriting processes. The Company has determined that costs associated with the agreement will be recorded as research and development expenses in the consolidated statements of operations in accordance with accounting standards codification guidance. The agreement stipulates that the life insurance carrier and reinsurer will share in costs equally with the Company up to \$200 each. Cost sharing reimbursements received from the life insurance carrier and reinsurer have been recorded within parallel run advance in the consolidated balance sheet as of September 30, 2022 and are being recognized as contra expenses in the consolidated statement of operations as the Company incurs costs related to the agreement.

Litigation

The Company may be involved in various claims and legal actions arising in the ordinary course of business. In the opinion of management, the ultimate disposition of these matters will not have a material adverse effect on the Company's financial position or liquidity. The Company is not aware of any material legal or regulatory matters threatened or pending against the Company.

Note 14 SUBSEQUENT EVENTS

The Company evaluated subsequent events and transactions that occurred after the balance sheet date up to November 21, 2022, the date that the unaudited consolidated financial statements were issued. Other than as described below, the Company did not identify any subsequent events that would have required adjustment or disclosure in the accompanying unaudited financial statements.

ELOC Agreement

On November 8, 2022, the ELOC Agreement between the Cantor Investor and the Company was terminated and the corresponding prepaid offering costs were expensed.

Forward Purchase Agreement

On November 11, 2022, the Forward Purchase Agreement between Meteora and the Company was amended to allow Meteora to retain 500,000 of shares as maturity consideration associated with the Put Date. The agreement was terminated resulting in the settlement of the forward purchase derivatives, elimination of the forward purchase collateral, and repurchase of the remaining shares subject to the Forward Purchase Agreement that Meteora had not already sold in the open market and were not part of the maturity consideration.

CEO Severance

In connection with his termination, the Company may be obligated to pay the former CEO cash severance equal to thirty-six months of his base salary. The Company is currently reviewing its obligations to the CEO with respect to compensation and severance..

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

References to the "Company," "us," "our" or "we" refer to FOXO Technologies Inc. and its consolidated subsidiaries. The following discussion and analysis summarizes the significant factors affecting the consolidated operating results, financial condition, liquidity, capital resources and cash flows of our Company as of and for the periods presented below. The following discussion should be read in conjunction with our unaudited consolidated financial statements and related notes included under "Item 1. Financial Statements" in this Quarterly Report on Form 10-Q (the "Report"). Dollar amounts are in thousands, unless otherwise noted.

Cautionary Note Regarding Forward-Looking Statements

This report contains forward-looking statements that are based on the beliefs of management, as well as assumptions made by, and information currently available, to our management. The words such "anticipate," "believe," "plan," "estimate," "expect," "intend," "may," "could," "should" and similar expressions may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. Actual results could differ materially from those contemplated by the forward-looking statements

Factors that could cause or contribute to such differences include, but are not limited to, those identified below, in Item 2 of this Report and those set forth in the final joint proxy statement/consent solicitation statement/prospectus filed by Delwinds Insurance Acquisition Corp, filed with the SEC on August 30, 2022 (the "Proxy Statement") under caption "Risk Factors." Some of the risks and uncertainties we face include:

- we have a history of losses and it may not achieve or maintain profitability in the future;
- our independent registered public accounting firms have included an explanatory paragraph relating to our ability to continue as a going concern, which could limit our ability to raise additional capital;
- we will require additional capital to commercialize our product and service offerings and grow our business, which may not be available on terms acceptable to us or at all;
- the loss of the services of our current executives or other key employees, or failure to attract additional key employees;
- the strength of our brands and our ability to develop, maintain and enhance our brands and our ability to develop and expand our customer base;
- access to the substantial resources to continue the development of new products and services;
- our ability to integrate molecular biotechnology into the life insurance industry;
- our ability to commercialize our technology enabled products and services with a high level of service at a competitive price, achieve sufficient sales volumes to realize economies of scale and create innovative new products and services to offer to our customers;
- our ability to effectively and in a cost-feasible manner acquire, maintain and engage with our targeted customers;
- the impact on our business of security incidents or real or perceived errors, failures or bugs in our systems and/or websites;
- the impact of changes in the general economic conditions;
- the impact of the continuation of the COVID-19 pandemic;
- our plans to expand operations abroad, through planned partnerships with international life insurance carriers;
- our success and ability to establish and grow our epigenetic testing service and the development of epigenetic biomarkers for use in life insurance underwriting;
- our ability to apply the relatively new field of epigenetics to life insurance underwriting;
- our ability to validate and improve the results of our 2019 Pilot Study;
- the impact of competition in the personal health and wellness testing market;
- our ability to procure materials and services from third-party suppliers for our epigenetic testing services;
- our ability to maintain compliance now or in the future to laws and regulations relating to laboratory testing, our underwriting technology and consumer engagement services and our use of saliva-based epigenetic biomarkers;
- our ability to maintain focus on our main business line initiatives, while providing ancillary product and service offerings that support our baseline technology;

- our ability to satisfy the regulatory conditions that our life insurance business operates in;
- the ability to contract or maintain MGA (as defined below) relationships from selling life insurance products underwritten and issued by third-party carriers;
- our success and ability to establish and grow our MGA Model (as described below);
- the impact of an overall decline in life insurance product sales;
- competition in the life insurance industry;
- our ability to establish relationships necessary to execute on our business plans;
- our ability to underwrite risks accurately and charge competitive yet profitable premium rates;
- the dependence on search engines, social media platforms, content-based online advertising and other online sources to attract customers to our website;
- the impact of interruptions or delays in the service of our internet service providers;
- our ability to comply with customer privacy and data privacy and security laws and regulations;
- our ability to prevent or address the misappropriation of our data;
- our ability to comply with current and changes to the extensive insurance industry regulations in each state that we operate;
- our ability to maintain FOXO Life Insurance Company’s risk-based capital at the required levels;
- the impact of new legislation or legal requirements affecting how we communicate with our customers;
- our ability to retain our license for patent pending methods of identifying epigenetic biomarkers and identifying saliva-based epigenetic biomarkers or intellectual property in general;
- our ability to obtain sufficiently broad protection of our intellectual property throughout the world;
- the impact of changes in trademark or patent law in the United States and other jurisdictions;
- the impact of claims that our employees, consultants or independent contractors have wrongfully used or disclosed confidential information of third parties or that our employees have wrongfully used or disclosed alleged trade secret of their former employees;
- our ability to successfully register and enforce our trademarks;
- the impact of claims challenging the inventorship of our patents and other intellectual property;
- the impact of costs and expenses if we become involved in trademark or patent litigation or other proceedings;
- the adequacy of our patent terms to protect our competitive position; and
- the risks to our proprietary software and source code from our use of open source software.

Overview

We are a technology platform company focused on commercializing longevity science into products and services that serve the life insurance industry. The products and services we are developing combine longevity science with life insurance to simplify the consumer underwriting journey. Our goal is to make healthy longevity fundamental to the promise of every life insurance policy sold. We believe our products and services address long-standing, core problems within the life insurance industry.

To simplify the consumer underwriting journey, we are commercializing epigenetic biomarker technology to offer life insurance carriers a saliva-based underwriting solution. Our underwriting technology seeks to platform seeks to incorporate saliva-based epigenetic biomarkers of molecular health and aging to address the single biggest pain point in the industry according to the Life Insurance Marketing and Research Association or LIMRA.

To support consumer health and wellness engagement, we are also developing an insurance products platform, called FOXO Life, that seeks to incorporate our consumer engagement and underwriting technology to create new reasons to purchase life insurance with “Life Insurance Designed to Keep you Alive.”™ FOXO Life offers insurance products issued by third-party insurance carriers under a managing general agency (“MGA”) relationship (as described below). FOXO Life provides consumers with a personalized longevity report (which we refer to as our Longevity Report) based on proprietary epigenetic measurements of aging using an “epigenetic clock” (as described below). We believe the Longevity Report will help make longevity science core to the relationship between life insurance carriers, agents and consumers.

We expect FOXO Life to earn commission revenues, marketing allowances, and service fees by selling longevity science driven insurance products to consumers directly and through independent insurance agents. Initially, we do not expect to use epigenetic underwriting technology in the life insurance products FOXO Life sells. However, we expect the research and development studies underway will support the introduction and commercialization of our saliva-based underwriting technology in 2023. FOXO Life will be launching at a time when consumer interest in life insurance has increased due to the COVID-19 pandemic and when innovative applications of technology and molecular biotechnology are ripe to disrupt the industry.

We believe linking healthy longevity with life insurance provides agents with a new and meaningful way to engage consumers in life insurance coverage to protect their families' financial futures.

FOXO Labs – Underwriting Technology

FOXO Labs is commercializing proprietary, patent pending, epigenetic biomarker technology to assess the same underwriting factors used in life insurance underwriting today from a saliva specimen. We believe our underwriting technology can address the core industry pain point of medical underwriting. Medical underwriting is the dominant form of assessing the relative health and longevity of insurance applicants and it is lengthy and invasive, and includes blood and urine specimen collection requirements. Insurance carriers prefer medical underwriting because it offers accurate mortality risk classifications. Our research with insurance agents indicates that medical underwriting is a significant impediment to sales, detaching agents from selling and consumers from buying life insurance. We believe that our saliva-based underwriting technology, when paired with advances in accelerated underwriting protocols, will offer insurance carriers the same, or better, risk classifications as medical underwriting. We also believe that once our saliva-based underwriting is adopted by carriers, it will have a sentinel effect within the industry that will further drive carriers to adopt our technology. We have observed that changes in life insurance industry underwriting happen infrequently, but when new innovations are introduced, adoption can be rapid and pervasive, such as when prescription data became available, blood testing became a requirement, or when smoker / non-smoker tables were adopted. We believe our saliva-based underwriting technology can follow a similar adoption pathway to prior underwriting innovations and generate significant services fee revenues.

FOXO Life - Insurance Sales and Distribution

FOXO Life is operationalizing a sales and distribution platform focused on recruiting independent life insurance agents to sell life insurance with our Longevity Report. FOXO Life markets and sells life insurance products underwritten and issued by third-party carriers through MGA relationships with two insurance carriers: Assurity Life and Haven Life. We plan to continue expanding FOXO Life through additional MGA relationships to include the various types of term and permanent life insurance products. MGA relationships allow us to earn commission revenues, marketing allowances, and service fees from the sale of insurance products sold by independent insurance agents. Independent insurance agents were responsible for 49% of all life insurance premiums sold in the United States in 2020 according to LIMRA. We expect revenues generated from our MGA product sales through independent agents to be a meaningful contributor to our business. We believe our MGA distribution relationships are critical to enabling us to introduce our epigenetic underwriting technology into the products we sell.

We are commencing operations with systems that we believe allow for significant scaling at a time when we observe (i) burgeoning consumer interest in health and longevity; (ii) increased interest in life insurance due the COVID-19 pandemic; and (iii) a significant opportunity to disrupt a large, old, and slow life insurance industry with innovative applications of fast-moving modern technology. We believe our products and services can help reverse a general decline in household ownership of life insurance in the United States by providing a simplified pathway to purchase life insurance with longevity focused products that re-establish their relevance with consumers and restore life insurance as a tool for greater social good.

Business Trends

- **Life Insurance Demand.** According to the 2021 Insurance Barometer Study, there are significant increases in consumer interest and demand for life insurance, with nearly one-third (31%) of consumers surveyed reporting COVID-19 makes them more likely to purchase life insurance within the next 12 months. In addition, the study reported the first sales gains in life insurance since 1983 and described that 22% of Americans (29 million consumers) owning life insurance believe they need more coverage and 59% of Americans (73 million consumers) without life insurance say they would like to acquire coverage. That means 102 million Americans say they either need life insurance coverage or want more of it. The study identified Millennials (ages 22-40) as the demographic most influenced by the pandemic, with 48% surveyed saying they plan to purchase coverage in the next year. Thus, despite the record-low household ownership of life insurance, the 2021 Insurance Barometer Study indicates Americans' intent to purchase life insurance is at an all-time high.

- **Product Innovation.** As life insurance carriers and distributors look to engage consumers renewed interest in life insurance coverage, industry analysts suggest that life insurance can succeed by adopting technology to (i) personalize every aspect of the consumer experience, transition from a traditional “assess and service” model toward a customer-centric “prescribe and prevent” model of health management; and (ii) develop innovative product solutions that place emphasis on product flexibility and innovation, including value-added services and nonmonetary benefits to attract consumers. Other analysts point to the need to reduce sales friction for both consumers and agents that stems from long underwriting timelines as a result of invasive blood and urine specimen collection.

Segments

We manage and classify our business into two reportable business segments:

(i) Insurance Services Platform: FOXO Labs

FOXO Labs is commercializing proprietary epigenetic biomarker technology to be used for mortality underwriting risk classification in the global life insurance industry. Our innovative biomarker technology enables the adoption of new saliva-based health and wellness biomarker solutions for underwriting and risk assessment. Our research demonstrates that epigenetic biomarkers, collected from saliva, provide measures of individual health and wellness factors used in life insurance underwriting traditionally obtained through blood and urine specimens.

FOXO Labs currently recognizes revenue from providing epigenetic testing services and collecting a royalty from Illumina, Inc. related to the sales of the Infinium Mouse Methylation Array. The Company’s saliva-based health and wellness testing solutions for underwriting and risk classification is expected to be its largest source of revenue. FOXO Labs conducts research and development and such costs are recorded within research and development expenses on the consolidated statements of operations.

(ii) Insurance Services Platform: FOXO Life

FOXO Life is redefining the relationship between consumers and insurer by combining life insurance with healthy longevity. FOXO Life seeks to transform the value proposition of the life insurance carrier from a provider of mortality risk protection products to a promoter of its customers’ health and wellness. FOXO Life’s Longevity Report strives to provide life insurance consumers with valuable information and insights about their individual health and wellness.

FOXO Life currently has residual commission revenues from its legacy insurance agency business. FOXO Life expects to begin selling insurance products under a MGA relationship with a national carrier partner in the first quarter of 2023. FOXO Life anticipates receiving insurance commission from the distribution and sale of life insurance policies based on the size and type of policies sold to customers. FOXO Life costs are recorded within selling, general and administrative expenses on the consolidated statements of operations.

Acquisition of Insurance Entity

We completed our acquisition of Memorial Insurance Company of America (“MICOA”) on August 20, 2021. Purchase consideration for the acquisition of MICOA totaled \$1,155, which included an indefinite-lived insurance license intangible asset recorded at a fair value of \$63 and cash of \$1,092. We fair valued reinsurance recoverables and policy reserves as part of the acquisition. The existing statutory capital and surplus remains with us post-acquisition. The approval by the Arkansas Insurance Department requires us to maintain statutory capital and surplus of no less than \$5,000 and a risk-based capital ratio of 301% or greater in the regulated insurance entity. MICOA has been renamed FOXO Life Insurance Company.

As part of the transaction, the former owners of MICOA continue to administer and 100% reinsure all policies outstanding as of the acquisition date. FOXO Life Insurance Company has not issued any new insurance policies since the acquisition and all premiums, reinsurance recoverables, and policy reserves relate to the 100% reinsured business. FOXO Life Insurance Company remains liable only in the event the reinsuring company is unable to meet its obligations under the reinsurance agreement.

FOXO Life Insurance Company is required to prepare statutory financial statements in accordance with statutory accounting practices prescribed or permitted by the Arkansas Insurance Department. The activity of FOXO Life Insurance Company post-acquisition is included in the consolidated financial statements in accordance with generally accepted accounting principles.

For additional information concerning FOXO Life Insurance Company operations, see “*Recent Developments – FOXO Life Insurance Company*” below.

Comparability of Financial Results

On September 15, 2022, we consummated the transactions contemplated by the Agreement and Plan of Merger, dated as of February 24, 2022, as amended on April 26, 2022, July 6, 2022 and August 12, 2022 (the “Merger Agreement”), with FOXO Technologies Inc., now known as FOXO Technologies Operating Company (“FOXO Technologies Operating Company”), DWIN Merger Sub Inc., a Delaware corporation and a wholly owned subsidiary of Delwinds (“Merger Sub”), and DIAC Sponsor LLC (the “Sponsor”), in its capacity as the representative of the stockholders of Delwinds from and after the closing (the “Closing”) (collectively, the “Transaction” or the “Business Combination”). Immediately upon the Closing, the name of the combined company was changed to FOXO Technologies Inc.

FOXO Technologies Operating Company was determined to be the accounting acquirer in the Business Combination. Accordingly, the acquisition of FOXO Technologies Operating Company by the Company was accounted for as a reverse recapitalization. Under this method of accounting, the Company was treated as the acquiree for financial reporting purposes. The net assets of the Company were stated at their historical cost, with no goodwill or other separately identifiable intangible assets recorded. The balance sheet, results of operations and cash flows prior to the Business Combination are those of FOXO Technologies Operating Company.

Simultaneously with the execution of the Merger Agreement, Delwinds entered into a Common Stock Purchase Agreement (the “ELOC Agreement”) with CF Principal Investments LLC (the “Cantor Investor”), pursuant to which, assuming satisfaction of certain conditions and subject to limitations set forth in the ELOC Agreement, the Company would have the right, from time to time to sell the Cantor Investor up to \$40,000 in shares of the Company’s Class A common stock (the “Class A Common Stock”) until the first day of the next month following the 36-month anniversary of when the SEC has declared effective a registration statement covering the resale of such shares of Class A Common Stock or until the date on which the facility has been fully utilized, if earlier.

In accordance with the terms of the Merger Agreement, at Closing, the Company (i) acquired 100% of the issued and outstanding FOXO Technologies Operating Company Class A common stock (the “FOXO Class A Common Stock”) in exchange for equity consideration in the form of the Company’s Class A Common Stock, (ii) acquired 100% of the issued and outstanding shares of FOXO Technologies Operating Company Class B common stock (the “FOXO Class B Common Stock”) in exchange for equity consideration in the form of the Company’s Class A Common Stock.

Immediately prior to the Closing, the following transactions occurred:

- 8,000,000 shares of FOXO Technologies Operating Company Series A preferred stock (the “FOXO Preferred Stock”) were exchanged for 8,000,000 shares of FOXO Class A Common Stock.

- The 2021 Bridge Debentures (as defined in Note 5 to our unaudited consolidated financial statements) in the principal amount, together with accrued and unpaid interest, of \$24,402 were converted into 6,759,642 shares of FOXO Class A Common Stock.
- The holders of the 2022 Bridge Debentures (as defined in Note 5 to our unaudited consolidated financial statements) in the principal amount, together with accrued and unpaid interest, of \$34,496 were converted into 7,810,509 shares of FOXO Class A Common Stock.

As a result of and upon the Closing, among other things, (1) all outstanding shares of FOXO Class A Common Stock (after giving effect to the conversion of the FOXO Preferred Stock into shares of FOXO Class A Common Stock) and FOXO Class B Common Stock were converted into 15,518,705 shares of the Company's Class A Common Stock, (2) all FOXO options and FOXO warrants outstanding immediately before the Closing ("Assumed Options" and "Assumed Warrants", as applicable) were assumed and converted, subject to adjustment pursuant to the terms of the Merger Agreement, into options and warrants, respectively, of the Company, exercisable for share of the Company's Class A Common Stock and (3) other than the Assumed Options and Assumed Warrants, all other convertible securities and other rights to purchase capital stock of FOXO Technologies Operating Company were retired and terminated, if they were not converted, exchanged or exercised for FOXO Technologies Operating Company stock immediately prior the Closing.

Recent Developments

FOXO Life Insurance Company

In connection with the Business Combination, we submitted various filings with the Arkansas Insurance Department (the "Department") to ensure compliance with Arkansas insurance laws. After review and analysis of the relevant documentation and meetings with us, on September 9, 2022, the Department advised us that it concluded that the Business Combination did not require approval from the Department given that there was no change in the ultimate controlling party. Due to market conditions, our capitalization following the Business Combination did not materialize in the way the Company anticipated, and we do not currently possess the funding that we believe would be required to satisfy state regulations and regulatory bodies to issue new life insurance policies through FOXO Life Insurance Company. As such, we will not move forward with the launch of FOXO Life Insurance Company and plan to evaluate opportunities relating to this entity that we believe will enhance stockholder value. The outstanding policies issued by FOXO Life Insurance will continue to be administered and reinsured by the former owners of MICOA. We intend to focus on selling products issued by third-party carriers through our MGA Model (as described above).

ELOC Agreement

On November 8, 2022, the Company and CF Principal Investments LLC (the "Cantor Investor") mutually terminated ELOC Agreement. Upon the termination of the ELOC Agreement, the related Registration Rights Agreement, dated as of February 24, 2022 (the "Registration Rights Agreement"), by and between the Company and the Cantor Investor was automatically terminated in accordance with its terms. Pursuant to the terms of the ELOC Agreement, the Company issued 190,476 shares of Class A Common Stock to the Cantor Investor on September 16, 2022 as consideration for its irrevocable commitment to purchase the shares of Class A Common Stock upon the terms and subject to the satisfaction of the conditions set forth in the ELOC Agreement. The corresponding prepaid offering costs were expensed upon termination of the agreement.

Forward Purchase Agreement

On November 11, 2022, the Forward Purchase Agreement between Meteora and the Company was amended to allow Meteora to retain 500,000 of shares as maturity consideration associated with the Put Date (as defined in the Forward Purchase Agreement). The agreement was terminated resulting in the settlement of the forward purchase derivatives, elimination of the forward purchase collateral, and repurchase of the remaining shares subject to the Forward Purchase Agreement that Meteora had not already sold in the open market and were not part of the maturity consideration.

Management Changes

On November 14, 2022 Jon Sabes and Steve Sabes were terminated as the Company's Chief Executive Officer and Chairman and Chief Operating Officer, respectively. We may be obligated to pay the former CEO cash severance equal to thirty-six months of his base salary. The Company is currently reviewing its obligations to the CEO with respect to compensation and severance. Tyler Danielson, who serves as the Company's Chief Technology Officer, was named Interim Chief Executive Officer and principal executive officer, effectively immediately.

Non-GAAP Financial Measures

To supplement our financial information presented in accordance with U.S. GAAP, management periodically uses certain “non-GAAP financial measures,” as such term is defined under the rules of the SEC, to clarify and enhance understanding of past performance and prospects for the future. Generally, a non-GAAP financial measure is a numerical measure of a company’s operating performance, financial position or cash flows that excludes or includes amounts that are included in or excluded from the most directly comparable measure calculated and presented in accordance with U.S. GAAP. For example, non-GAAP measures may exclude the impact of certain items such as acquisitions, divestitures, gains, losses and impairments, or items outside of management’s control. Management believes that the following non-GAAP financial measure provides investors and analysts useful insight into our financial position and operating performance. Any non-GAAP measure provided should be viewed in addition to, and not as an alternative to, the most directly comparable measure determined in accordance with U.S. GAAP. Further, the calculation of these non-GAAP financial measures may differ from the calculation of similarly titled financial measures presented by other companies and therefore may not be comparable among companies.

Adjusted EBITDA provides additional insight into our underlying, ongoing operating performance and facilitates period-to-period comparisons by excluding the earnings impact of interest, tax, depreciation and amortization, investment impairment, non-cash change in fair value of convertible debentures, and equity-based compensation. Management believes that presenting Adjusted EBITDA is more representative of our operational performance and may be more useful for investors. Adjusted EBITDA along with a reconciliation to net loss is shown in Other Operating Data within the Results of Operations below.

Results of Operations

The following discussion includes our results for the three and nine ended September 30, 2022, which includes the results of operations of Delwinds from September 15, 2022 through September 30, 2022. Accordingly, our consolidated results of operations are not comparable to our consolidated results of operations for prior periods and may not be comparable with our consolidated results of operations for future periods.

Three Months Ended September 30, 2022 and 2021

<i>(Dollars in thousands)</i>	2022	2021	Change in \$	Change in %
Total revenue	\$ 14	\$ 31	\$ (17)	(55)%
Operating expenses:				
Research and development	558	1,665	(1,107)	(66)%
Selling, general and administrative	8,269	2,721	5,548	204%
Total operating expenses	8,827	4,386	4,441	101%
Loss from operations	(8,813)	(4,355)	(4,458)	102%
Non-cash change in fair value of convertible debentures	(3,697)	(22,571)	18,874	(84)%
Change in fair value of warrant liability	1,349	-	1,349	N/A%
Change in fair value of forward purchase put derivative	(1,284)	-	(1,284)	N/A%
Change in fair value of forward purchase collateral derivative	(27,378)	-	(27,378)	N/A%
Other expense	(1,203)	(315)	(888)	282%
Total other expense	(32,213)	(22,886)	(9,327)	41%
Net loss	\$ (41,026)	\$ (27,241)	\$ 13,785	51%

Revenues. Total revenues were \$14 for the three months ended September 30, 2022 compared to \$31 for the three months ended September 30, 2021. The decrease of \$17 was primarily due to a reduction of the royalty rate on Illumina, Inc.'s license to manufacture and sell Infinium Mouse Methylation Arrays using our epigenetic research. The royalty rate was decreased from 5% to 1.25% in connection with the elimination of a purchase commitment.

Research and Development. Research and development expenses were \$558 for the three months ended September 30, 2022 compared to \$1,665 for the three months ended September 30, 2021. The decrease of \$1,107, or 66%, was driven by expenses incurred during the three months ended September 30, 2021 related to Harvard University's Brigham and Women's Hospital Physicians' Health Study ("PHS") that did not reoccur in the 2022 comparable period.

Selling, General and Administrative. Selling, general and administrative expenses were \$8,269 for the three months ended September 30, 2022 compared to \$2,721 for the three months ended September 30, 2021. The increase of \$5,548, or 204%, was primarily due to increased costs incurred to support business growth and the implementation of our business plan, specifically employee-related expenses, software costs, as well as incremental professional services incurred in connection with the Business Combination, and \$1,600 of expense related to the Cantor Commitment Fee as defined in Note 7 of the unaudited consolidated financial statements.

Non-Cash Change in Fair Value of Convertible Debentures. The non-cash change in fair value of convertible debentures was (\$3,697) for the three months ended September 30, 2022 compared to (\$22,571) for the three months ended September 30, 2021. We elected the fair value option to account for the 2021 Bridge Debentures and 2022 Bridge Debentures. The increase in fair value for the three months ended September 30, 2021 was the result of the increased likelihood of voluntary or mandatory conversion at OIP, which represents a favorable result to holders of the debentures. The change for the three months ended September 30, 2022 reflected incremental changes in the likelihood of conversion for both the 2021 and 2022 Bridge Debentures.

Change in Fair Value of Warrant Liabilities. The change in fair value of warrant liabilities was \$1,349 during the three months ended September 30, 2022 as a result of a reduction in the fair value of derivative warrant liabilities assumed as part of the Business Combination.

Change in Fair Value of Forward Purchase Put Derivative. The change in fair value of forward purchase put derivative was (\$1,284) during the three months ended September 30, 2022 as a result of entering into the forward purchase agreement that was entered into as part of the Business Combination which may cause us to repurchase shares.

Change in Fair Value of Forward Purchase Collateral Derivative. The change in fair value of forward purchase derivative was (\$27,378) during the three months ended September 30, 2022 as a result of entering into the forward purchase agreement that was entered into as part of the Business Combination which may cause us to forego receiving cash proceeds under the forward purchase agreement.

Other Expense. We recognized other expense of (\$1,203) for the three months ended September 30, 2022 compared to (\$315) for the three months ended September 30, 2021. This increase was the result expenses associated with the forward purchase agreement and of incremental contractual interest expense incurred as a result of the 2021 Bridge Amendment partially offset by an increase in the amount of capitalized interest for the three months ended September 30, 2022.

Net Loss. Net loss was (\$41,026) for the three months ended September 30, 2022, an increase of \$13,785 or 51% compared to (\$27,241) in the prior year comparable period. This increase was primarily due to change in fair value of the forward purchase derivatives and increased selling, general, and administrative expenses partially offset by lower non cash change in fair value of convertible debentures.

Analysis of Segment Results:

The following is an analysis of our results by reportable segment for the three months ended September 30, 2022 compared to the three months ended September 30, 2021. The primary income measure used for assessing reportable segment performance is earnings before interest, income taxes, depreciation, amortization, and equity-based compensation ("Segment Earnings"). Segment Earnings by reportable segment also excludes corporate and other costs, including management, IT, and overhead costs. For further information regarding our reportable business segments, please refer to our consolidated financial statements and related notes included elsewhere in this quarterly report.

FOXO Labs

(Dollars in thousands)

	2022	2021	Change in \$	Change in %
Total revenue	\$ 7	\$ 23	\$ (16)	(70)%
Research and development expenses	506	1,655	(1,149)	(69)%
Segment Earnings	<u>\$ (499)</u>	<u>\$ (1,632)</u>	\$ 1,133	(69)%

Revenues. Total revenues were \$7 and \$23 for the three months ended September 30, 2022 and 2021, respectively, and consisted of earned royalties from Illumina, Inc.'s license to manufacture and sell Infinium Mouse Methylation Arrays using our epigenetic research. The decrease of \$16 was due to a reduced royalty rate.

Segment Earnings. Segment Earnings increased from (\$1,632) for the three months ended September 30, 2021 to (\$499) for the three months ended September 30, 2022. The increase of \$1,133 was driven by expenses incurred during the three months ended September 30, 2021 related to the commencement of PHS that did not reoccur in the 2022 comparable period.

FOXO Life

(Dollars in thousands)

	2022	2021	Change in \$	Change in %
Total revenue	\$ 7	\$ 8	\$ (1)	(13)%
Selling, general and administrative expenses	1,164	839	325	39%
Segment Earnings	<u>\$ (1,157)</u>	<u>\$ (831)</u>	\$ (326)	39%

Revenues. Total revenues were \$7 for the three months ended September 30, 2022 compared to \$8 for the three months ended September 30, 2021. The decrease was due to reduced life insurance commissions earned as we ceased placing policies from our legacy agency business.

Segment Earnings. Segment Earnings decreased from (\$831) for the three months ended September 30, 2021 to (\$1,157) for the three months ended September 30, 2022. The decrease of (\$326) was primarily due to increased employee-related expenses and costs for professional services.

Nine Months Ended September 30, 2022 and 2021

(Dollars in thousands)

	2022	2021	Change in \$	Change in %
Total revenue	\$ 93	\$ 93	\$ -	-%
Operating expenses:				
Research and development	2,160	4,321	(2,161)	(50)%
Selling, general and administrative	17,239	7,640	9,599	126%
Total operating expenses	<u>19,399</u>	<u>11,961</u>	7,438	62%
Loss from operations	(19,306)	(11,868)	(7,438)	63%
Non-cash change in fair value of convertible debentures	(28,180)	(24,890)	(3,290)	13%
Change in fair value of warrant liability	1,349	-	1,349	N/A%
Change in fair value of forward purchase put derivative	(1,284)	-	(1,284)	N/A%
Change in fair value of forward purchase collateral derivative	(27,378)	-	(27,378)	N/A%
Other expense	(2,133)	(856)	(1,277)	149%
Total other expense	<u>(57,626)</u>	<u>(25,746)</u>	(32,363)	124%
Net loss	<u>\$ (76,932)</u>	<u>\$ (37,614)</u>	\$ (39,318)	105%

Revenues. Total revenues were \$93 for both the nine months ended September 30, 2022 and 2021. During the nine months ended September 30, 2022, the Company recognized \$4 of additional revenue compared to the prior period in earned royalties from Illumina, Inc.'s license to manufacture and sell Infinium Mouse Methylation Arrays. This increase was offset by a \$4 decrease in life insurance commissions earned as we ceased placing policies from our legacy agency business.

Research and Development. Research and development expenses were \$2,160 for the nine months ended September 30, 2022 compared to \$4,321 for the nine months ended September 30, 2021. The decrease of \$2,161, or 50%, was driven by \$3,076 of expenses incurred during the nine months ended September 30, 2021 related to PHS that were insignificant in the comparable period. Costs incurred for PHS during the nine months ended September 30, 2021 included two milestone payments due at commencement and upon the transfer of clinical data, as well as costs related to supplies and processing fees. This decrease was partially offset by incremental research and development costs associated with a clinical trial agreement with The Brigham and Women's Hospital, Inc. ("VECTOR"), specifically a \$424 payment at contract inception. Additional employee-related expenses incurred during the nine months ended September 30, 2022 also partially offset the decrease in research and development expenses over the comparison period.

Selling, General and Administrative. Selling, general and administrative expenses were \$17,239 for the nine months ended September 30, 2022 compared to \$7,640 for the nine months ended September 30, 2021. The increase of \$9,599, or 126%, was primarily due to increased costs incurred to support business growth and the implementation of our business plan, specifically employee-related expenses, software costs, as well as incremental professional services incurred in connection with the Business Combinations, and \$1,600 of expense related to the Cantor Commitment Fee as defined in Note 7 of the unaudited consolidated financial statements.

Non-Cash Change in Fair Value of Convertible Debentures. The non-cash change in fair value of convertible debentures was (\$28,180) for the nine months ended September 30, 2022 compared to (\$24,890) for the nine months ended September 30, 2021. We elected the fair value option to account for the 2021 Bridge Debentures and 2022 Bridge Debentures. The increase in fair value for the nine months ended September 30, 2021 was the result of the increased likelihood of voluntary or mandatory conversion at OIP, which represents a favorable result to holders of the debentures. The change for the nine months ended September 30, 2022 also reflected the increase in fair value associated with incurring additional debt. Additionally, the likelihood of conversion for both the 2021 and 2022 Bridge Debentures increased throughout the nine months ended September 30, 2020 representing a favorable result to the holders of the debentures.

Change in Fair Value of Warrant Liabilities. The change in fair value of warrant liabilities was \$1,349 during the nine months ended September 30, 2022 as a result of a reduction in the fair value of derivative warrant liabilities assumed as part of the Business Combination.

Change in Fair Value of Forward Purchase Put Derivative. The change in fair value of forward purchase put derivative was (\$1,284) during the nine months ended September 30, 2022 as a result of entering into the forward purchase agreement that was entered into as part of the Business Combination which may cause us to repurchase shares.

Change in Fair Value of Forward Purchase Collateral Derivative. The change in fair value of forward purchase collateral derivative was (\$27,378) during the three months ended September 30, 2022 as a result of entering into the forward purchase agreement that was entered into as part of the Business Combination which may cause us to forego receiving cash proceeds under the forward purchase agreement.

Other Expense. We recognized other expense of (\$2,133) for the nine months ended September 30, 2022 compared to (\$856) for the nine months ended September 30, 2021. This increase was the result of expenses associated with the forward purchase agreement and incremental contractual interest expense incurred as a result of the 2021 Bridge Amendment partially offset by an increase in the amount of capitalized interest for the nine months ended September 30, 2022.

Net Loss. Net loss was (\$76,932) for the nine months ended September 30, 2022, an increase of \$39,318 or 105% compared to (\$37,614) in the prior year comparable period. This increase was primarily due to change in fair value of the forward purchase derivatives and increased selling, general, and administrative expenses partially offset by lower non cash change in fair value of convertible debentures.

Analysis of Segment Results:

The following is an analysis of our results by reportable segment for the nine months ended September 30, 2022 compared to the nine months ended September 30, 2021. The primary income measure used for assessing reportable segment performance is earnings before interest, income taxes, depreciation, amortization, and equity-based compensation. Segment Earnings by reportable segment also excludes corporate and other costs, including management, IT, and overhead costs. For further information regarding our reportable business segments, please refer to our consolidated financial statements and related notes included elsewhere in this quarterly report.

FOXO Labs

(Dollars in thousands)

	2022	2021	Change in \$	Change in %
Total revenue	\$ 71	\$ 67	\$ 4	6%
Research and development expenses	2,023	4,335	(2,312)	(53)%
Segment Earnings	\$ (1,952)	\$ (4,268)	\$ 2,316	(54)%

Revenues. Total revenues were \$71 and \$67 for the nine months ended September 30, 2022 and 2021, respectively, and consisted of earned royalties from Illumina, Inc.'s license to manufacture and sell Infinium Mouse Methylation Arrays using our epigenetic research.

Segment Earnings. Segment Earnings increased from (\$4,268) for the nine months ended September 30, 2021 to (\$1,952) for the nine months ended September 30, 2022. The increase of \$2,316 was driven by \$3,076 of expenses incurred during the nine months ended September 30, 2021 related to PHS that were insignificant in the 2022 comparable period which were offset by a \$424 payment at contract inception for VECTOR as well as additional employee-related expenses.

FOXO Life

(Dollars in thousands)

	2022	2021	Change in \$	Change in %
Total revenue	\$ 22	\$ 26	\$ (4)	(15)%
Selling, general and administrative expenses	3,092	1,693	1,399	83%
Segment Earnings	\$ (3,070)	\$ (1,667)	\$ (1,403)	84%

Revenues. Total revenues were \$22 for the nine months ended September 30, 2022 compared to \$26 for the nine months ended September 30, 2021. The decrease was due to reduced life insurance commissions earned as we ceased placing policies from our legacy agency business.

Segment Earnings. Segment Earnings decreased from (\$1,667) for the nine months ended September 30, 2021 to (\$3,070) for the nine months ended September 30, 2022. The decrease of (\$1,403) was primarily due to increased employee-related expenses and costs for professional services.

Other Operating Data:

We use Adjusted EBITDA to evaluate our operating performance. Adjusted EBITDA does not represent and should not be considered an alternative to net income as determined by U.S. GAAP, and our calculations thereof may not be comparable to those reported by other companies. We believe Adjusted EBITDA is an important measure of operating performance and provides useful information to investors because it highlights trends in our business that may not otherwise be apparent when relying solely on U.S. GAAP measures and because it eliminates items that have less bearing on our operating performance. Adjusted EBITDA, as presented herein, is a supplemental measure of our performance that is not required by, or presented in accordance with, U.S. GAAP. We use non-GAAP financial measures as supplements to our U.S. GAAP results in order to provide a more complete understanding of the factors and trends affecting our business. Adjusted EBITDA is a measure of operating performance that is not defined by U.S. GAAP and should not be considered a substitute for net (loss) income as determined in accordance with U.S. GAAP.

We reconcile our non-GAAP financial measure to our net loss, which is its most directly comparable financial measure calculated and presented in accordance with U.S. GAAP. Our management uses Adjusted EBITDA as a financial measure to evaluate the profitability and efficiency of our business model. Adjusted EBITDA is not presented in accordance with U.S. GAAP. Adjusted EBITDA includes adjustments for provision for income taxes, as applicable, interest income and expense, depreciation and amortization, equity-based compensation (including the non-cash charges related to the consulting agreement), and certain other infrequent and/or unpredictable non-cash charges or benefits, such as changes in fair value of convertible debentures, warrant liabilities, and the forward purchase derivative.

	For the three months ended September 30,		For the nine months ended September 30,	
	2022	2021	2022	2021
<i>(Dollars in thousands)</i>				
Net loss	\$ (41,026)	\$ (27,241)	\$ (76,932)	\$ (37,614)
Add: Depreciation	74	25	159	71
Add: Interest expense (income)	424	313	1,250	825
Add: Equity-based compensation ⁽¹⁾	3,866	42	5,556	8
Add: Non-cash change in fair value of convertible debentures	3,697	22,571	28,180	24,890
Add: Change in fair value of warrant liability	(1,349)	-	(1,349)	-
Add: Change in fair value of forward purchase put derivative	1,284	-	1,284	-
Add: Change in fair value of forward purchase collateral derivative	27,378	-	27,378	-
Adjusted EBITDA	\$ (5,652)	\$ (4,290)	\$ (14,474)	\$ (11,820)

(1) Includes expense recognized related to the shares issued to the Consultant and for the Cantor Commitment Fee as defined in Notes 6 and 7 of the unaudited consolidated financial statements

Liquidity and Capital Resources

Sources of Liquidity and Capital

We had cash and cash equivalents of \$10,454 and \$6,856 as of September 30, 2022 and December 31, 2021, respectively. Excluding amounts held as statutory capital and surplus by FOXO Life Insurance Company, we had \$5,453 and \$1,856 as of September 30, 2022 and December 31, 2021, respectively. We have incurred net losses since our inception. For the nine months ended September 30, 2022 and 2021, we incurred net losses of \$76,932 and \$37,614, respectively. We had an accumulated deficit of \$128,908 and \$51,976, respectively, as of September 30, 2022 and December 31, 2021. We have generated limited revenue to date and expect to incur additional losses in future periods.

Prior to the closing of the Business Combination, we have financed our business through a combination of equity and debt, consisting of proceeds from a subscription receivable and proceeds from convertible debenture offerings. The subscription receivable initially totaled \$20,000, with last installment being received during the third quarter of 2021.

During the first quarter of 2021, we entered into separate Securities Purchase Agreements with the 2021 Bridge Investors, pursuant to which we issued convertible debentures for \$11,812 in aggregate principal. After an original issue discount of 12.5% we received cash proceeds of \$10,500 for this issuance. Additionally, we incurred an incremental \$888 of fees and expenses related to the offering. The 2021 Bridge Debentures were issued in three tranches, on January 25, 2021, February 23, 2021, and March 4, 2021.

Additionally, during the first quarter of 2022, we entered into separate Securities Purchase Agreements with the 2022 Bridge Investors, pursuant to which we issued the 2022 Bridge Debentures for \$24,750 in aggregate principal. After an original issue discount of 10.0% we received cash proceeds of \$22,500 for this issuance. In the second quarter of 2022, we issued additional 2022 Bridge Debentures pursuant to which we raised an additional \$5,500 in cash proceeds or \$6,050 in aggregate principal amount under the same terms as the issuance of the 2022 Bridge Debentures in the first quarter of 2022, resulting in total cash proceeds of \$28,000 from the issuance of the 2022 Bridge Debentures.

Immediately prior to the Closing, the 2021 Bridge Debentures and 2022 Bridge Debentures were converted into 6,759,642 and 7,810,509, respectively, shares of FOXO Class A Common Stock and were subsequently exchanged for shares of the Company's Class A Common Stock at the Closing of the Business Combination.

During the third quarter of 2022, we entered into separate Securities Purchase Agreements pursuant to which we issued our Senior PIK Notes in the aggregate principal of \$3,458. We received net proceeds of \$2,918, after deducting fees and expenses of \$540.

Our primary uses of cash are to fund our operations as we continue to grow our business. We expect to continue to incur operating losses in the near term to support the growth of our business. Capital expenditures have historically not been material to our consolidated operations, and we do not anticipate making material capital expenditures in 2022 or beyond. We expect that our liquidity requirements will continue to consist of working capital and general corporate expenses associated with the growth of our business. Based on our current planned operations, we expect to address our liquidity needs through the pursuit of additional funding through a combination of equity or debt financings to enable us to fund our operations for at least 12 months from the date hereof. We also expect revenue from our MGA relationships to contribute in funding our operations. To the extent that we require additional funds more than 12 months from the date hereof, and the revenue from our MGA relationships cannot fund our needs, we may utilize a combination of equity and debt financings. In the absence of sufficient proceeds from these sources, however, we will need additional financial support, which cannot be assured, or we will have to significantly reduce our expenditures or delay certain business initiatives to sustain operations. As such, until additional equity or debt capital is secured and the Company begins generating sufficient revenue, there is substantial doubt about the Company's ability to continue as a going concern.

We have based our estimates as to how long we expect we will be able to fund our operations on assumptions that may prove to be wrong, and we could use our available capital resources sooner than we currently expect, in which case we would be required to obtain additional financing sooner than currently projected, which may not be available to us on acceptable terms, or at all. Our failure to raise capital as and when needed would have a negative impact on our financial condition and our ability to pursue our business strategy. We may raise additional capital through equity offerings, debt financings or other capital sources. If we do raise additional capital through public or private equity offerings, or convertible debt offerings, the ownership interest of our existing stockholders will be diluted, and the terms of these securities may include liquidation or other preferences that adversely impact our existing stockholders' rights. If we raise additional capital through debt financing, we may be subject to covenants limiting or restricting our ability to take certain actions.

Cash Flows

Nine Months Ended September 30, 2022 and 2021

The following table summarizes our cash flow data for the nine months ended September 30, 2022 and 2021 (dollars in thousands):

Nine Months Ended September 30	Cash Provided by / (Used in)	
	2022	2021
Operating Activities	\$ (19,232)	\$ (11,746)
Investing Activities	\$ (1,730)	\$ (195)
Financing Activities	\$ 24,560	\$ 14,250

Operating Activities

Net cash used for operating activities in the nine months ended September 30, 2022 was \$19,232 compared to \$11,746 in the nine months ended September 30, 2021. Operating cash flow decreased \$7,486, or 64%, from the nine months ended September 30, 2021 to the nine months ended September 30, 2022. The decrease was the result of an increased net loss, primarily driven by non-cash items, as well as increased working capital.

Investing Activities

Net cash used for investing activities in the nine months ended September 30, 2022 was \$1,730 compared to \$195 in the nine months ended September 30, 2021. This investing cash flow decrease of \$1,535 was due to incremental costs incurred to develop internal use software and increased capital expenditures, partially offset by a decrease in investments made.

Financing Activities

Net cash provided by financing activities in the nine months ended September 30, 2022 was \$24,560 compared to \$14,250 in the nine months ended September 30, 2021. This financing cash flow increase was the result of higher debt proceeds of \$28,000 from the 2022 Bridge Debentures and \$2,918 net proceeds from the Senior PIK Notes compared to \$10,500 from the 2021 Bridge Debentures. This was partially offset by reduced proceeds received on our Subscription Receivable during the nine months ended September 30, 2021, warrant repurchases and the series of transactions associated with the Business Combination.

Off-Balance Sheet Financing Arrangements

We have no obligations, assets or liabilities which would be considered off-balance sheet arrangements. We do not participate in transactions that create relationships with unconsolidated entities or financial partnerships, often referred to as variable interest entities, which would have been established for the purpose of facilitating off-balance sheet arrangements.

We have not entered into any off-balance sheet financing arrangements, established any special purpose entities, guaranteed any debt or commitments of other entities, or entered into any non-financial assets.

Contractual Obligations

Our contractual obligations as of September 30, 2022 include:

(Dollars in thousands)	Amounts Due by Period				
	Less than 1 Year (d)	1 - 3 years	3 - 5 years	More than 5 years	Total (d)
License agreements (a)	\$ 25	80	80	-	\$ 185
Research agreements (b)	53	-	-	-	53
Senior PIK Notes (c)	-	3,458	-	-	3,458
Total	\$ 78	3,538	80	-	\$ 3,696

(a) License agreements remain in place until the licensor's patents expire or are abandoned. Amounts do not include development milestones that have not been reached as of September 30, 2022.

(b) Amounts relate to completing CHOP in the upcoming year. See Note 13 of the unaudited consolidated financial statements.

(c) Represents the principal balance at inception. The Senior PIK Notes are subject to prepayment penalties and interest may be paid through the issuance of additional Senior PIK Notes. The ultimate amount required to settle the Senior PIK Note will vary depending on when it is settled. See Note 5 of the unaudited consolidated financial statements.

(d) Does not include \$425 of potential milestone payments related to the VECTOR study. The milestone payments are within the control of the Company and as of September 30, 2022 the milestones have not been met. See Note 13 of the unaudited consolidated financial statements.

Critical Accounting Policies

The preparation of the unaudited consolidated financial statements and related notes included under "Item 1. Financial Statements" and related disclosures in conformity with GAAP. The preparation of these consolidated financial statements requires the selection of the appropriate accounting principles to be applied and the judgments and assumptions on which to base accounting estimates, which affect the reported amounts of assets and liabilities as of the date of the balance sheets, the reported amounts of revenue and expenses during the reporting periods, and related disclosures. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances at the time such estimates are made. Actual results and outcomes may differ materially from our estimates, judgments, and assumptions. We periodically review our estimates in light of changes in circumstances, facts, and experience. The effects of material revisions in estimates are reflected in the consolidated financial statements prospectively from the date of the change in estimate.

We define our critical accounting policies and estimates as those that require us to make subjective judgments about matters that are uncertain and are likely to have a material impact on our financial condition and results of operations as well as the specific manner in which we apply those principles. We believe the critical accounting policies used in the preparation of our financial statements which require significant estimates and judgments are as follows:

Equity-Based Compensation

Historically, prior to the Business Combination, we offered equity-based compensation to employees and nonemployees in the form of stock options and restricted stock. We measure and recognize all equity-based payments to employees, service providers and board members at fair value. The cost of services received from employees and non-employees in exchange for awards of equity instruments is recognized in the consolidated statements of operations based on the estimated fair value of those awards on the grant date or reporting date, if required to be remeasured, and amortized on a straight-line basis over the requisite service period. We recognize forfeitures as incurred. We utilize a Black-Scholes valuation model to estimate the fair value of stock options and this model requires the input of assumptions, including the exercise price, volatility, expected term, discount rate, and the fair value of the underlying membership or stock on the date of grant. These inputs are provided at the grant date for an equity classified award and each measurement date for a liability classified award. Equity-based compensation awards are considered granted (i) when there is a mutual understanding of key terms, (ii) we are contingently obligated to issue the options, and (iii) the option holder begins to benefit or be adversely impacted by changes in our stock price. This primarily occurs at the time the stock option agreements are executed.

Our option pricing model requires the input of highly subjective assumptions, including the fair value of the underlying units or stock, the expected term of the equity-based award, the expected volatility of the price of our common units or stock, risk-free interest rates, and the expected dividend yield of our common units or stock. The assumptions used in our option pricing model represent management's best estimates. These estimates involve inherent uncertainties and the application of management's judgment. If factors change and different assumptions are used, our equity-based compensation expense could be materially different in the future.

These assumptions were estimated as follows:

- **Fair Value of Our Common Stock:** As FOXO Technologies Operating Company's common stock was not publicly traded, we estimated the fair value of our common stock, as discussed in the section "Common Stock Valuations" below.
- **Risk-Free Interest Rate:** We based the risk-free interest rate used in the Black-Scholes option pricing model on the implied yield to maturity available on a U.S. Treasury constant maturity security with a term commensurate with the expected term of the stock options.
- **Expected Term:** We estimated the expected term using the simplified method due to the lack of historical exercise activity for our common stock. The simplified method calculates the expected term as the mid-point between the vesting term and the contractual term of the award.
- **Volatility:** As FOXO Technologies Operating Company was a privately held company with no trading history prior, we estimated the stock price volatility factor by referencing historical volatilities of comparable peer companies. To determine a set of comparable peer companies, we considered similar public companies and selected those that are most similar to us in size, stage of life cycle, and financial leverage. We intend to continue to apply this process using the same or similar public companies until sufficient historical information regarding the volatility of our own common stock share price becomes available, or unless circumstances change such that the identified companies are no longer comparable to our business, in which case, more suitable companies whose share prices are publicly available would be utilized in the calculation.
- **Dividend yield:** We have never declared or paid any cash dividends and do not presently plan to pay cash dividends in the foreseeable future. Consequently, we used an expected dividend yield of zero.

Common Stock Valuations

As FOXO Technologies Operating Company's common stock was not publicly traded, the fair value of our equity, which is the basis upon which all of our equity-based compensation awards was measured and recognized, was determined by our board of directors, with input from management and third-party valuation specialists. The third-party valuation specialists apply valuation techniques and methods that conform to generally accepted valuation practices and standards established by the American Society of Appraisers in accordance with Uniform Standards of Professional Appraisal Practice. The valuation methodologies and techniques utilized are also consistent with guidance issued by the American Institute of Certified Public Accountants in its *Accounting and Valuation Guide, Valuation of Privately-Held-Company Equity Securities Issued as Compensation, 2013*. The specialists used a variety of both objective and subjective factors, including:

- the nature of our business and its history since inception;
- the prices, rights, preferences, and privileges of our preferred units relative to those of our common units;
- our stage of development;
- our operating and financial performance and forecast;
- the present value of estimated future cash flows;
- the likelihood of achieving a liquidity event for the shares of common units underlying the options to purchase common stock, such as an initial public offering or sale of our company, given prevailing market conditions and the nature and history of our business;
- any adjustment necessary to recognize a lack of marketability for our common stock;
- the market performance of comparable publicly traded companies; and
- conditions in the U.S. and global capital markets.

A valuation was performed by an independent third-party valuation specialist in November 2019, concurrent with the formation of FOXO Technologies Operating Company as a limited liability company. In this valuation, the Cost Approach was used to determine enterprise value based on the fair market value of our assets. This approach was utilized given our lack of earnings history and the start-up nature of our business and operations, both of which brought into question our ability to continue as a going concern. At the time of this valuation, the estimated enterprise value was primarily based on the subscription receivable.

Another valuation was performed by an independent third-party valuation specialist in November 2020 following the corporate conversion of FOXO Technologies Operating Company and in anticipation of issuing stock options. The valuation was performed using the same methodology, but also considered a liquidation preference for preferred stock calculated using a Black-Scholes valuation model. At the time of this valuation, the majority of the subscription receivable had already been collected, causing a reduction in the estimated enterprise value. The liquidation preference for preferred stock and a discount for lack of marketability also had an adverse impact on valuation, which was determined to be \$0.21 per share of common stock.

We have historically refreshed enterprise valuations to determine the fair value of our equity-based compensation at grant date for stock options.

We conduct performance reviews twice annually following the end of the second and fourth quarter. Our first stock option grant occurred following our biannual review after the fourth quarter of 2020, with the formal grant occurring when the stock option agreements were executed in April 2021. At that time, the fair value of our common stock was \$0.09 per share. While the preferred stock is outstanding, holders have protection from share issuance at a price below the original issue price, as adjusted ("nine"). Accordingly, for stock options granted in April 2021, the exercise price per option was set at an amount slightly above the anticipated nine. Stock options granted in April 2021 comprise the majority of stock options outstanding as of September 30, 2022.

We completed our biannual review following the second quarter of 2021 as we entered into negotiations with Delwinds. At this time, stock options were issued with the same exercise price as the April 2021 grant. This was determined to be a good faith estimate as a result of the uncertainty of the transaction, prior values of common stock, and the historical investment of our preferred stockholder. As a result of a letter of intent (the "Letter of Intent") to merge with Delwinds, we considered it prudent to have another valuation performed to record equity-based compensation expense in the consolidated financial statements reflective of the updated circumstances surrounding our company. This valuation report was received subsequent to the grant of the stock options but is reflected in the consolidated financial statements for this grant.

This valuation report reflected a change in methodology due to the letter of intent related to the Business Combination and development of our Company as a result of the in-process August order to acquire MICOA. This valuation report used a probability weighting of the Market Approach and Income Approach. The Market Approach reflected the offer from Delwinds based on the pre-money valuation of FOXO plus a Monte Carlo simulation to capture the value from earn-out shares based on exceeding specified per share price targets after closing. The Income Approach utilized a discounted cash flow analysis to provide an estimate of enterprise value based on the present value of anticipated future cash flows. As with prior valuations, a Black-Scholes valuation model was used to value each equity class by creating a series of call options on our equity value, with exercise prices based on the liquidation preferences and participation rights. The non-marketability discount in this valuation report was 20%.

Stock options were granted in January and February of 2022 after the completion of our biannual review following the fourth quarter of 2021 based on the valuation discussed above as the circumstances surrounding our common stock remained relatively stable during the timeframe from the valuation report to the option grant.

Application of these approaches and methodologies involves the use of estimates, judgment and assumptions that are highly complex and subjective, such as those regarding our expected operations, the selection of comparable public companies, and the probability of and timing associated with possible future events. Changes in any or all of these estimates and assumptions or the relationships between those assumptions impact our valuations as of each valuation date and may have a material impact on the valuation of our common stock.

Fair Value of Convertible Debentures

We elected the fair value option to account for the 2021 Bridge Debentures and 2022 Bridge Debentures. The fair value option provides an election that allows a company to irrevocably elect to record certain financial assets and liabilities at fair value on an instrument-by-instrument basis at initial recognition. We elected the fair value option to better depict the ultimate liability associated with the debentures, including all features and embedded derivatives. The debentures accounted for under the fair value option election represent debt host financial instruments containing certain embedded features that would otherwise be required to be bifurcated from the debt host and recognized as separate derivative liabilities subject to initial and subsequent periodic fair value measurement in accordance with U.S. GAAP. When the fair value option election is applied to financial liabilities, bifurcation of embedded derivatives is not required, and the financial liability in totality is recorded at its issue-date estimated fair value and then subsequently remeasured at estimated fair value on a recurring basis as of each balance sheet date thereafter. Upon remeasurement, the portion of a change in estimated fair value attributable to a change in instrument-specific credit risk is recognized as a component of other comprehensive income (loss) and the remaining amount of a change in estimated fair value is to be recognized in the consolidated statements of operations.

During 2021, the fair value of the 2021 Bridge Debentures was determined using a Monte Carlo simulation, which is commonly used to value convertible debt instruments, and is intended to provide an estimated fair value that approximates the equity value that would be received upon conversion. The significant assumptions used in those models were as follows:

- **Likelihood of term extension:** The Securities Purchase Agreements gave us the right to extend the maturity date for each issuance of convertible debentures for an additional three-month period and incur an extension amount rate of 110% of the outstanding balance. Increases in the likelihood of term extension as of a given reporting date increase the potential principal amount and thus the estimated fair value of the convertible debentures derived from the Monte Carlo simulation. Conversely, in the event that term extension is less likely as of a given reporting date, the principal is less likely to be increased, meaning the estimated fair value is likely to stay nearer to the issuance-date fair value.
- **Likelihood of conversion:** The convertible debentures allowed for both: (i) voluntary conversion of aggregate principal and accrued and unpaid interest to shares of Class A common stock at the option of the holder at a price per share equal to nine and (ii) mandatory conversion of aggregate principal and accrued and unpaid interest upon FOXO consummating an offering of common stock, including a special purpose acquisition company transaction, for an aggregate price of at least \$5,000 at a price per share equal to the lower of (a) 70% of the offering price per share or (b) nine. Given the terms of the convertible debt, and depending upon the fair value of our equity as of a given reporting date, voluntary and mandatory conversion features are often beneficial to holders and thus have the potential to materially increase the estimated fair value of the convertible debentures. For mandatory conversion, increases in the fair value of our equity as of a given reporting date make conversion at nine more likely, which is a favorable result to holders of the convertible debentures as compared to conversion at a price per share equal to 70% of a qualified offering price and thus increases the estimated fair value. Conversely, and while still beneficial to holders, conversion at a price per share equal to 70% of a qualified offering price increases the estimated fair value of the convertible debentures to a lesser degree than conversion at nine. Voluntary conversion is considered in the Monte Carlo simulation and affects the estimated fair value in scenarios in which a qualified offering event that would affect mandatory conversion does not take place.

Other notable, but not significant, assumptions utilized in the Monte Carlo simulations included, but were not limited to, implied borrowing and annualized volatility rates.

As a result of the execution of the Merger Agreement on February 24, 2022, the ultimate value to holders of the 2021 Bridge Debentures and 2022 Bridge Debentures upon voluntary or mandatory conversion became clearer, and thus management determined that a Monte Carlo simulation was no longer appropriate for purposes of estimating fair value. Thus, for the first and second quarters of 2022, the estimated fair value of the 2021 Bridge Debentures and 2022 Bridge Debentures was calculated using a probability-weighted expected return model. The significant assumptions used in the models were as follows:

- **Timing of conversion:** The probability-weighted expected return model required management to estimate, based on known facts and circumstances at the time of valuation, the date on which conversion of the debentures will take place. That estimate drives the discount factor utilized in the model, which impacts the derived fair value. If the conversion date is set further in the future, a greater discount rate would be applied, driving down the fair value of the debt in a conversion scenario.
- **Likelihood of conversion:** The 2021 Bridge Debentures contain voluntary and mandatory conversion provisions, which are discussed at length above. As the fair value of our equity increases, both conversion mechanisms represent an increasingly favorable result to holders and thus as the likelihood of conversion increases, so too does the estimated fair value of our liability related to the 2021 Bridge Debentures. The 2022 Bridge Debentures allow for both: (i) voluntary conversion of aggregate principal and unpaid interest thereon to shares of Class A common stock at any time after two hundred seventy days following the original issue dates, at a conversion price equal to \$5.00 per share, except that if there has been no mandatory conversion within three hundred sixty days following the original issue date, the conversion price following such three hundred sixty-day period would be equal to \$4.00 per share; and (ii) mandatory conversion of aggregate principal and unpaid interest thereon upon consummation of an offering of common stock, including a special purpose acquisition company transaction, for an aggregate price of at least \$5,000, at a conversion price equal to 75% of the offering price per share. In the conversion scenario, the probability-weighted expected return model determines which conversion mechanism is most favorable to holders and assumes holders will choose the most favorable option in estimating fair value. Depending upon the fair value of our equity as of a given reporting date, these conversion features are often beneficial to holders and thus, increases in the likelihood of conversion increase the estimated fair value of our liability related to the 2022 Bridge Debentures.

Other notable, but not significant, assumptions used in the probability-weighted expected return model included, but were not limited to, implied borrowing rates.

Going Concern

On a quarterly basis, we assess going concern uncertainty for our consolidated financial statements to determine if we have sufficient cash and cash equivalents on hand and working capital to operate for a period of at least one year from the date our consolidated financial statements are issued or are available to be issued (the “look-forward period”). Based on conditions that are known and reasonably knowable to us, we consider various scenarios, forecasts, projections, and estimates, and we make certain key assumptions, including the timing and nature of projected cash expenditures or programs, among other factors, and our ability to delay or curtail those expenditures or programs within the look-forward period, if necessary. Until additional equity or debt capital is secured and the Company begins generating sufficient revenue, there is substantial doubt about the Company’s ability to continue as a going concern.

Recent Accounting Pronouncements

See Note 3 to our unaudited consolidated financial statements “Summary of Significant Accounting Policies – Recently Issued Accounting Standards” included elsewhere in this Report for more information.

Factors That May Adversely Affect our Results of Operations

Our results of operations may be adversely affected by various factors that could cause economic uncertainty and volatility in the financial markets, many of which are beyond our control. Our business could be impacted by, among other things, downturns in the financial markets or in economic conditions, increases in oil prices, inflation, increases in interest rates, supply chain disruptions, declines in consumer confidence and spending, the ongoing effects of the COVID-19 pandemic, including resurgences and the emergence of new variants, and geopolitical instability, such as the military conflict in the Ukraine. We cannot at this time fully predict the likelihood of one or more of the above events, their duration or magnitude or the extent to which they may negatively impact our business.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

We are a smaller reporting company as defined by Rule 12b-2 of the Exchange Act and are not required to provide the information otherwise required under this item.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Disclosure controls and procedures are controls and other procedures designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is accumulated and communicated to management, including our principal executive officer and our principal financial officer (the “Certifying Officers”), or persons performing similar functions, as appropriate, to allow timely decisions regarding required disclosure.

Under the supervision and with the participation of our management, including our Certifying Officers, we carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act. Based on the foregoing, our Certifying Officers concluded that our disclosure controls and procedures were effective as of September 30, 2022.

Changes in Internal Control over Financial Reporting

As discussed elsewhere in this Report on Form 10-Q, we completed the Business Combination on September 15, 2021. Delwinds was a special purpose acquisition company formed for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or other similar business combination with one or more target businesses, and FOXO Technologies Operating Company was a privately held company.

The Company’s operations prior the Business Combination were materially different compared to the Company post- Business Combination. The design and implementation of internal controls over financial reporting for the post-Business Combination Company has required and will continue to require significant time and resources from management and other personnel.

Limitations on Effectiveness of Controls and Procedures

We do not expect that our disclosure controls and procedures will prevent all errors and all instances of fraud. Disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the disclosure controls and procedures are met. Further, the design of disclosure controls and procedures must reflect the fact that there are resource constraints, and the benefits must be considered relative to their costs. Because of the inherent limitations in all disclosure controls and procedures, no evaluation of disclosure controls and procedures can provide absolute assurance that we have detected all our control deficiencies and instances of fraud, if any. The design of disclosure controls and procedures also is based partly on certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions.

PART II - OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

From time to time, the Company may become involved in litigation relating to claims arising out of our operations in the normal course of business. The Company is not currently involved in any material pending legal proceedings, and to the best of our knowledge, no governmental authority is contemplating any proceeding to which the Company is a party or to which any of the Company's properties is subject, which would reasonably be likely to have a material adverse effect on the Company's business, financial condition and operating results.

ITEM 1A. RISK FACTORS

Our Current Report on Form 8-K, filed with the SEC, on September 21, 2022, describes important risk factors that could cause our business, financial condition, results of operations and growth prospects to differ materially from those indicated or suggested by forward-looking statements made in this Quarterly Report on Form 10-Q or presented elsewhere by management from time to time. There have been no material changes in the risk factors that appear in our Current Report on Form 8-K, other than those listed below. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial may also materially and adversely affect our business.

Covenants in our indebtedness could limit our flexibility and adversely affect our financial condition.

Our outstanding indebtedness contains several restrictive covenants, including that we cannot, without the prior written consent of 50.01% of the holders of our senior promissory notes (the "Notes"), create or incur any other indebtedness. If any of our covenants are breached and not cured within applicable cure periods, the breach could result in acceleration of our indebtedness and penalties. Limitations on our ability to incur new indebtedness under the terms of our debt securities may limit the amount of new investments we make.

The Notes mature on April 1, 2024 (the "Maturity Date"), and accrue interest at an annual interest rate of 15%, commencing on the issuance date, compounded quarterly on each December 20, March 20, June and September 20 until the Maturity Date and on the Maturity Date itself (each, an "Interest Payment Due Date"). Interest is payable by increasing the principal amount of the Note (with such increased amount accruing interest as well) on each Interest Payment Due Date ("PIK Interest"). Monthly payments on the outstanding principal amount of the Note, as such amount may be increased as the result of the payment of PIK Interest (the "Outstanding Principal Balance"), will commence on November 1, 2023, until the Outstanding Principal Balance has been paid in full on the Maturity Date, or, if earlier, upon acceleration, or prepayment of the Note in accordance with the Notes terms. A default by us on the Notes would have a material adverse effect on our business, liquidity and the market price of our common stock.

The warrants issued by FOXO under its January 2021 bridge financings and assumed by the Company as part of the Business Combination have anti-dilution rights that could be triggered as part of future financings.

If FOXO raises additional funds through the issuance of equity, equity-linked or debt securities with an exercise price lower than \$6.21 per share at such time as the warrants issued under the January 2021 bridge financing are outstanding (the "Assumed Warrants"), the anti-dilution protection provisions in the Assumed Warrants will be triggered. Specifically, the exercise price and number of warrant shares of the Assumed Warrants will be adjusted to reflect such lower issuance price as the new equity is sold and the number of shares issuable under the Assumed Warrant will be increased such that the aggregate exercise price after the lower price adjustment shall be equal to the aggregate exercise price prior to adjustment. This anti-dilution adjustment will have a dilutive effect on the Company's equity and may hamper its ability to complete future financings.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Information regarding all equity securities of the registrant sold by the Company during the period covered by this Report that were not registered under the Securities Act were included in a Current Report on Form 8-K filed by the Company with the SEC on September 21, 2022, and therefore is not required to be furnished herein.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

The information set forth below is included herein for the purpose of providing the disclosure required under “Item 1.02 – Termination of a Material Definitive Agreement.” of Form 8-K.

On November 8, 2022, the Company and CF Principal Investments LLC (the “Cantor Investor”) mutually terminated that certain Common Stock Purchase Agreement, dated as of February 24, 2022 (the “Purchase Agreement”), by and between the Company and the Cantor Investor. Upon the termination of the Purchase Agreement, the related Registration Rights Agreement, dated as of February 24, 2022 (the “Registration Rights Agreement”), by and between the Company and the Cantor Investor was automatically terminated in accordance with its terms. Pursuant to the terms of the Purchase Agreement, the Company issued 190,476 shares of Class A Common Stock to the Cantor Investor on September 16, 2022 as consideration for its irrevocable commitment to purchase the shares of Class A Common Stock upon the terms and subject to the satisfaction of the conditions set forth in the Purchase Agreement.

On November 11, 2022, the Company and Meteora Special Opportunity Fund I, LP, Meteora Select Trading Opportunities Master, LP, and Meteora Capital Partners, LP (collectively, “Meteora”) mutually terminated that certain Forward Share Purchase Agreement, dated as of September 13, 2022 (the “Forward Purchase Agreement”), by and between the Company and Meteora, in exchange for 500,000 shares. Upon the termination of the Forward Purchase Agreement, the related escrow agreement was terminated.

The foregoing descriptions of the Purchase Agreement and the Registration Rights Agreement are not complete and are qualified in their entirety by reference to the full text of the Purchase Agreement and the Registration Rights Agreement, copies of which are filed as Exhibit 10.4 and 10.5, respectively, to the Company’s Current Report on Form 8-K filed with the SEC on March 2, 2022. The foregoing description of the Forward Purchase Agreement is not complete and is qualified in its entirety by reference to the full text of the Forward Purchase Agreement, a copy of which is filed as Exhibit 10.14 to the Company’s Current Report on Form 8-K filed with the SEC on September 21, 2022.

ITEM 6. EXHIBITS

The following exhibits are filed as part of, or incorporated by reference into, this Report.

Exhibit Number	Description of Exhibit
2.1	Agreement and Plan of Merger, dated as of February 24, 2022, by and among Delwinds Insurance Acquisition Corp., FOXO Technologies Inc., DWIN Merger Sub Inc., and DIAC Sponsor LLC, in its capacity as Purchaser Representative thereunder. (1)
2.2	Amendment to Agreement and Plan of Merger, dated as of April 26, 2022, by and among Delwinds Insurance Acquisition Corp., FOXO Technologies Inc. and DIAC Sponsor LLC, in its capacity as Purchaser Representative. (1)
2.3	Amendment No. 2 to Agreement and Plan of Merger, dated as of July 6, 2022, by and among Delwinds Insurance Acquisition Corp., FOXO Technologies Inc. and DIAC Sponsor LLC, in its capacity as Purchaser Representative. (1)
2.4	Amendment No. 3 to Agreement and Plan of Merger, dated as of August 12, 2022, by and among Delwinds Insurance Acquisition Corp., FOXO Technologies Inc. and DIAC Sponsor LLC, in its capacity as Purchaser Representative. (1)
3.1	Certificate of Incorporation of FOXO Technologies Inc. (1)
3.2	Bylaws of FOXO Technologies Inc. (1)
4.1	Form of Assumed Warrant. (1)
4.2	Form of 15% Senior Promissory Note. (1)
10.1	FOXO Technologies Inc. 2022 Equity Incentive Plan. (1)
10.2	2022 Management Contingent Share Plan (including Notice of Grant). (1)
10.3	Forward Share Purchase Agreement, dated September 13, 2022, by and between (i) Delwinds, (ii) Meteora Special Opportunity Fund I, LP, a Delaware limited partnership (“MSOF”), (iii) Meteora Select Trading Opportunities Master, LP, a Cayman Islands limited partnership (“MSTO”) and (iv) Meteora Capital Partners, LP, a Delaware limited partnership. (1)
10.4	Form of Revised Backstop Subscription Agreement, dated September 13, 2022. (1)
10.5	Insider Letter Amendment. (1)
10.6	Form of Indemnification Agreement. (1)
10.7	Form of Senior Promissory Note Purchase Agreement. (1)
10.8	Placement Agency Agreement. (1)
10.9	Form of Lock-Up Release Agreement. (1)
10.10*	Form of Securities Purchase Agreement, dated as of January 25 2021, by and among FOXO Technologies Inc. and purchaser signatories thereto.
10.11#	Form of Employment Agreement of Jon Sabes.
10.12#	Form of Tyler Danielson’s Offer Letter.
10.13#	Form of Employment Agreement of Robby Potashnick.
10.14#	Form of Amended and Restated Employment Agreement of Brian Chen.
10.15#	Form of Michael Will’s Offer Letter.
31.1*	Certification of the Principal Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) under the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of the Principal Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) under the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1**	Certification of the Principal Executive Officer pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2**	Certification of the Principal Financial Officer pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS*	Inline XBRL Instance Document.*
101.SCH*	Inline XBRL Taxonomy Extension Schema Document.*
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document.*
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document.*
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document.*
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document.*
104*	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).*

* Filed herewith.

** Furnished herewith.

Indicates management contract or compensatory plan or arrangement.

(1) Incorporated by reference to the Company’s Current Report on Form 8-K, filed with the SEC on September 21, 2022.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

FOXO TECHNOLOGIES INC.

Date: November 21, 2022

/s/ Tyler Danielson

Name: Tyler Danielson

Title: Interim Chief Executive Officer
(Principal Executive Officer)

Date: November 21, 2022

/s/ Robert Potashnick

Name: Robert Potashnick

Title: Chief Financial Officer
(Principal Financial and Accounting Officer)

SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (this “Agreement”) is dated as of ___, 2020, between FOXO Technologies, Inc., a Delaware corporation (the “Company”), and each purchaser identified on the signature pages hereto (each, including its successors and assigns, a “Purchaser” and collectively, the “Purchasers”).

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”), and Rule 506 promulgated thereunder, the Company desires to issue and sell to each Purchaser, and each Purchaser, severally and not jointly, desires to purchase from the Company, securities of the Company as more fully described in this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and each Purchaser agree as follows:

**ARTICLE I.
DEFINITIONS**

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement: (a) capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Debentures (as defined herein), and (b) the following terms have the meanings set forth in this Section 1.1:

“Acquiring Person” shall have the meaning ascribed to such term in Section 4.7.

“Action” shall have the meaning ascribed to such term in Section 3.1(j). “Affiliate” means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

“Board of Directors” means the board of directors of the Company.

“Business Day” means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to “stay at home,” “shelter-in-place,” “non-essential employee” or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York are generally open for use by customers on such day.

“Buyout Transaction” means any capital raising transaction effectuated by the Company if the proceeds of such transaction are utilized by the Company to repay in full the total amount owed under the Debentures concurrently with the closing of such transaction.

“Closing” means any closing of the purchase and sale of the Securities pursuant to Section 2.1.

“Closing Date” means the Business Day on which all of the Transaction Documents have been executed and delivered by the applicable parties thereto, and all conditions precedent to (i) the Purchasers’ obligations to pay the Subscription Amount and (ii) the Company’s obligations to deliver the Securities, in each case, have been satisfied or waived. Pursuant to the terms of this Agreement, there may be one or more Closing Dates hereunder.

“Commission” means the United States Securities and Exchange Commission. “Common Stock” means the Class A common stock of the Company, par value \$0.00001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

“Common Stock Equivalents” means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Company Counsel” means Stinson LLP, with offices located at 50 South Sixth Street, Suite 2600, Minneapolis, MN 55402.

“Conversion Price” shall have the meaning ascribed to such term in the Debentures. “Debentures” means the 12.5% Original Issue Discount Convertible Debentures due, subject to the terms therein, 12 months from their date of issuance unless extended pursuant to the terms thereunder, issued by the Company to the Purchasers hereunder, in the form of Exhibit A attached hereto.

“Escrow Agent” means Signature Bank, with offices located at 565 Fifth Avenue, New York, NY 10017.

“Evaluation Date” shall have the meaning ascribed to such term in Section 3.1(s). “Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Exempt Issuance” means the issuance of (a) shares of Common Stock, restricted stock units or options to employees, officers or directors of the Company pursuant to any stock or option plan duly adopted for such purpose, by a majority of the non-employee members of the Board of Directors or a majority of the members of a committee of non-employee directors established for such purpose for services rendered to the Company, (b) securities upon the exercise, exchange of or conversion of any Securities issued hereunder and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of this Agreement, provided that such securities have not been amended since the date of this Agreement to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities (other than in connection with stock splits or combinations) or to extend the term of such securities, (c) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Company, provided that such securities are issued as “restricted securities” (as defined in Rule 144) and carry no registration rights that require or permit the filing of any registration statement in connection therewith, and provided that any such issuance shall only be to a Person (or to the equity holders of a Person) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities, (d) restricted stock units, restricted stock and options to consultants of the Company provided, however, any such issuances to consultants shall not exceed, in the aggregate, greater than 5% of the current issued and outstanding shares of underlying Common Stock, (e) Securities pursuant to the Transaction Documents, and (f) securities in a Qualified Offering.

“FCPA” means the Foreign Corrupt Practices Act of 1977, as amended. “GAAP” shall have the meaning ascribed to such term in Section 3.1(h).

“GWG Holdings” means GWG Holdings, Inc., a corporation incorporated under the laws of the State of Delaware.

“Indebtedness” shall have the meaning ascribed to such term in Section 3.1(bb). “Intellectual Property Rights” shall have the meaning ascribed to such term in Section 3.1(o).

“Legend Removal Date” shall have the meaning ascribed to such term in Section 4.1(c).

“Liens” means a lien, charge, pledge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

“Lock-Up Agreements” means the Lock-Up Agreements, dated as of the date hereof, by and among the Company and the directors, and officers, in the form of Exhibit E attached hereto and by and among the Company and the Purchasers, in the form of Exhibit I.

“Material Adverse Effect” shall have the meaning assigned to such term in Section 3.1(b).

“Material Permits” shall have the meaning ascribed to such term in Section 3.1(m).

“Maximum Amount” means an aggregate of \$11,250,000 in principal amount of Debentures representing cash payments from Purchasers of \$10,000,000 based on the 12.5% Original Issue Discount on the Debentures.

“Maximum Rate” shall have the meaning ascribed to such term in Section 5.17. “Minimum Amount” means a minimum of \$5,625,000 in principal amount of Debentures representing cash payments from Purchasers of \$5,000,000 based on the 12.5% Original Issue Discount on the Debentures, provided, however, that a minimum of \$2,000,000 must be invested by investors introduced by the Company and not the Placement Agent.

“Offering” means the offering of Debentures and Warrants pursuant to this Agreement and the other Transaction Documents.

“Offering Period” means the earlier of (i) the sale of the Maximum Amount, (ii) termination of the Offering as determined by the Company and the Placement Agent or (iii) February 15, 2021, which date may be extended by the Placement Agent and the Company in their joint discretion to March 15, 2021.

“Participation Maximum” shall have the meaning ascribed to such term in Section 4.12(a).

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Placement Agent” means Joseph Gunnar & Co. LLC.

“Pledged Securities” means any and all certificates and other instruments representing or evidencing all of the capital stock and other equity interests of the Subsidiaries.

“Pro Rata Portion” shall have the meaning ascribed to such term in Section 4.12(e).

“Proceeding” means an action, claim, suit, investigation or proceeding (including, without limitation, an informal investigation or partial proceeding, such as a deposition), whether commenced or threatened.

“Principal Amount” means, as to each Purchaser, the amounts set forth below such Purchaser’s signature block on the signature pages hereto next to the heading “Principal Amount,” in United States Dollars, which shall equal such Purchaser’s Subscription Amount multiplied by 1.125.

“Public Information Failure” shall have the meaning ascribed to such term in Section 4.3(b).

“Public Information Failure Payments” shall have the meaning ascribed to such term in Section 4.3(b).

“Purchaser Party” shall have the meaning ascribed to such term in Section 4.10.

“Qualified Offering” shall mean an offering of Common Stock (or units consisting of Common Stock and warrants to purchase Common Stock) for an aggregate price of at least \$5,000,000 resulting in the listing for trading of the Common Stock on the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing).

“Qualified Offering Price” shall mean the price per share (or unit, if units are offered in the Qualified Offering) at which the Qualified Offering is made. For the avoidance of doubt, if a unit includes more than one share of Common Stock, “Qualified Offering Price” shall mean the unit price divided by the number of shares of Common Stock contained in a unit.

“Required Approvals” shall have the meaning ascribed to such term in Section 3.1(e).

“Required Minimum” means four times (4x) the maximum aggregate number of shares of Common Stock then issued or potentially issuable in the future pursuant to the Transaction Documents, including any Underlying Shares issuable upon exercise in full of all Warrants or conversion in full of all Debentures (including Underlying Shares issuable as payment of interest on the Debentures), ignoring any conversion or exercise limits set forth therein.

“Rule 144” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time-to-time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“Rule 424” means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time-to-time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

“Securities” means the Debentures, the Warrants, the Warrant Shares and the Underlying Shares.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Short Sales” means all “short sales” as defined in Rule 200 of Regulation SHO under the Exchange Act (but shall not be deemed to include locating and/or borrowing shares of Common Stock).

“Subscription Amount” means, as to each Purchaser, the aggregate amount to be paid for the Debentures and Warrants purchased hereunder as specified below such Purchaser’s name on the signature page of this Agreement and next to the heading “Subscription Amount,” in United States dollars and in immediately available funds.

“Subsequent Financing” shall have the meaning ascribed to such term in Section 4.12(a).

“Subsequent Financing Notice” shall have the meaning ascribed to such term in Section 4.12(b).

“Subsidiary” means any subsidiary of the Company as set forth in Schedule 3.1(a) and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

“Subsidiary Guarantee” means the Subsidiary Guarantee, dated as of the date hereof, by each Subsidiary in favor of the Purchasers, in the form of Exhibit C attached hereto.

“Termination Date” means the date on which the Offering expires or is terminated.”

“Trading Day” means a day on which the principal Trading Market is open for trading.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, OTCQB or OTCQX (or any successors to any of the foregoing).

“Transaction Documents” means this Agreement, the Debentures, the Warrants, the Subsidiary Guarantee, the Lock-Up Agreements, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated hereunder.

“Transfer Agent” a transfer agent to be hereafter determined by the Company and any successor transfer agent of the Company.

“Underlying Shares” means the Warrant Shares and the shares of Common Stock issued and issuable pursuant to the terms of the Debenture, including without limitation, shares of Common Stock issued and issuable in lieu of the cash payment of interest on the Debentures in accordance with the terms of the Debentures, in each case without respect to any limitation or restriction on the conversion of the Debentures or the exercise of the Warrants.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on the Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Purchasers of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

“Warrants” means, collectively, the Common Stock purchase warrants delivered to the Purchasers at the Closing in accordance with Section 2.2(a) hereof, which Warrants shall be exercisable immediately and have a term of exercise equal to three (3) years, in the form of Exhibit D attached hereto.

“Warrant Shares” means the shares of Common Stock issuable upon exercise of the Warrants.

ARTICLE II. PURCHASE AND SALE

2.1 Closing. On the Closing Date, upon the terms and subject to the conditions set forth herein, substantially concurrent with the execution and delivery of this Agreement by the parties hereto, the Company agrees to sell, and the Purchasers, severally and not jointly, agree to purchase, Debentures and Warrants as set forth on each Purchaser’s signature page hereto. The Company shall have discretion regarding whether to accept an investor and for such investor to become a Purchaser under this Agreement and may reject any proposed investor. Each Purchaser shall have delivered to the Escrow Agent pursuant to the instructions contained on Schedule 2.1, via wire transfer or a certified check, immediately available funds equal to such Purchaser’s Subscription Amount as set forth on the signature page hereto executed by such Purchaser. Upon the Escrow Agent’s receipt of the Minimum Amount and the exchange of items set forth in Section 2.2, the Company and the Placement Agent may give notice to the Escrow Agent to arrange an initial Closing. At any Closing hereunder, the Company shall deliver to each Purchaser its respective Debenture and Warrant, as determined pursuant to Section 2.2(a), and the Company and each Purchaser shall deliver the other items set forth in Section 2.2 deliverable at the Closing. Following the initial Closing where at least the Minimum Amount is sold, subsequent closings may be held up to the sale of the Maximum Amount. Upon satisfaction of the covenants and conditions set forth in Sections 2.2 and 2.3, the Closing shall occur at such location as the parties shall mutually agree. Closings hereunder shall only be held during the Offering Period and in no event shall a Closing occur after the Termination Date.

2.2 Deliveries.

(a) On or prior to the Closing Date, the Company shall deliver or cause to be delivered to the Placement Agent on behalf of each Purchaser the following:

- (i) this Agreement duly executed by the Company;
- (ii) a Debenture with a principal amount equal to such Purchaser's Principal Amount, registered in the name of such Purchaser;
- (iii) a Warrant registered in the name of such Purchaser to purchase up to a number of shares of Common Stock equal to 100% of the shares of Common Stock initially issuable pursuant to such Purchaser's Debenture (without regard for any beneficial ownership limitations) with an exercise price equal to the lesser of (i) the Qualified Offering Price, or (ii) the Original Issue Price as defined in the Company's Certificate of Incorporation;
- (iv) the Subsidiary Guarantee, duly executed by the parties thereto; and
- (v) the Lock-Up Agreements.

(b) On or prior to the Closing Date, each Purchaser shall deliver or cause to be delivered to the Company the following:

- (i) this Agreement duly executed by such Purchaser;
- (ii) such Purchaser's Subscription Amount as to the Closing by wire transfer to the Escrow Agent to the account specified in Schedule 2.1 hereto; and
- (iii) Purchaser Questionnaire in the form of Exhibit F hereto.

2.3 Closing Conditions.

(a) The obligations of the Company hereunder in connection with the Closing are subject to the following conditions being met:

- (i) the accuracy in all material respects on (or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) the Closing Date of the representations and warranties of the Purchasers contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);
- (ii) all obligations, covenants and agreements of each Purchaser required to be performed at or prior to the Closing Date shall have been performed; and
- (iii) the delivery by each Purchaser of the items set forth in Section 2.2(b) of this Agreement.

(b) The respective obligations of the Purchasers hereunder in connection with the Closing are subject to the following conditions being met (it being understood that the Company may waive any of the conditions for any Closing hereafter):

- (i) the accuracy in all material respects (or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) when made and on the Closing Date of the representations and warranties of the Company contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);
- (ii) all obligations, covenants and agreements of the Company required to be performed at or prior to the Closing Date shall have been performed;
- (iii) the delivery by the Escrow Agent on behalf of the Company of the items set forth in Section 2.2(a) of this Agreement; and
- (iv) there shall have been no Material Adverse Effect with respect to the Company since the date hereof.

**ARTICLE III.
REPRESENTATIONS AND WARRANTIES**

3.1 Representations and Warranties of the Company. The Company hereby makes the following representations and warranties to each Purchaser:

(a) **Subsidiaries.** All of the direct and indirect subsidiaries of the Company are set forth on Schedule 3.1(a). Except as set forth on Schedule 3.1(a), the Company owns, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary free and clear of any Liens, and all of the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities. If the Company has no subsidiaries, all other references to the Subsidiaries or any of them in the Transaction Documents shall be disregarded.

(b) **Organization and Qualification.** The Company and each of the Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation nor default of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents, except as disclosed on Schedule 3.1(b). Each of the Company and the Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in: (i) a material adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material adverse effect on the results of operations, assets, business, prospects or condition (financial or otherwise) of the Company and the Subsidiaries, taken as a whole, or (iii) a material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under any Transaction Document (any of (i), (ii) or (iii), a "Material Adverse Effect") and no Proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(c) **Authorization; Enforcement.**

(i) The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and each of the other Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company, the Board of Directors or the Company's stockholders in connection herewith or therewith other than in connection with the Required Approvals. This Agreement and each other Transaction Document to which it is a party has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(ii) With respect to the Subsidiary Guarantee, each of the Subsidiaries has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by such agreement and otherwise to carry out its obligations thereunder. The execution and delivery of the Subsidiary Guarantee and the consummation by the Company of the transactions contemplated thereby have been duly authorized by all necessary action on the part of the Company, and no further action is required by the respective Subsidiary, its managers or its members in connection therewith. The Subsidiary Guarantee has been (or upon delivery will have been) duly executed by the respective Subsidiaries and, when delivered in accordance with the terms thereof, will constitute the valid and binding obligation of the respective Subsidiary enforceable against such Subsidiary in accordance with its terms, except (A) as listed by general equitable principals and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (B) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (C) insofar as indemnification and contribution provisions may be limited by applicable law.

(d) No Conflicts. The execution, delivery and performance by the Company of this Agreement and the other Transaction Documents to which it is a party, the issuance and sale of the Securities and the consummation by it of the transactions contemplated hereby and thereby do not and will not (i) conflict with or violate any provision of the Company's or any Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, anti-dilution or similar adjustments, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected except as disclosed on Schedule 3.1(d), or (iii) subject to the Required Approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii), such as could not have or reasonably be expected to result in a Material Adverse Effect.

(e) Filings, Consents and Approvals. Except as disclosed on Schedule 3.1(e), the Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than: (i) the filings required pursuant to Section 4.6 of this Agreement, and (ii) the filing of Form D with the Commission and such filings as are required to be made under applicable state securities laws (collectively, the "Required Approvals").

(f) Issuance of the Securities. The Securities are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents. The Underlying Shares, when issued in accordance with the terms of the Transaction Documents, will be validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents. On or before the Closing Date, the Company will reserve from its duly authorized capital stock a number of shares of Common Stock for issuance of the Underlying Shares at least equal to the Required Minimum on the date hereof.

(g) Capitalization. The capitalization of the Company as of the date hereof is as set forth on Schedule 3.1(g). No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents, except as disclosed on Schedule 3.1(g). Except as disclosed on Schedule 3.1(g), there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, any shares of Common Stock or the capital stock of any Subsidiary, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents or capital stock of any Subsidiary. Except as set forth on Schedule 3.1(g), the issuance and sale of the Securities will not obligate the Company or any Subsidiary to issue shares of Common Stock or other securities to any Person (other than the Purchasers). Except as set forth on Schedule 3.1(g), there are no outstanding securities or instruments of the Company or any Subsidiary with any provision that adjusts the exercise, conversion, exchange or reset price of such security or instrument upon an issuance of securities by the Company or any Subsidiary. There are no outstanding securities or instruments of the Company or any Subsidiary that contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to redeem a security of the Company or such Subsidiary. Except as set forth on Schedule 3.1(g), the Company does not have any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement. All of the outstanding shares of capital stock of the Company are duly authorized, validly issued, fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. No further approval or authorization of any stockholder, the Board of Directors or others is required for the issuance and sale of the Securities. Except as set forth on Schedule 3.1(g), there are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders.

(h) Financial Statements. Except as set forth on Schedule 3.1(h), the Company's financial statements have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved ("GAAP"), except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments.

(i) Material Changes; Undisclosed Events, Liabilities or Developments. Except as disclosed on Schedule 3.1(i) since the date of the latest audited financial statements (i) there has been no event, occurrence or development that has had or that could reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP, (iii) the Company has not altered its method of accounting, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock and (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company stock option plans. Except for the issuance of the Securities contemplated by this Agreement or as set forth herein, no event, liability, fact, circumstance, occurrence or development has occurred or exists or is reasonably expected to occur or exist with respect to the Company or its Subsidiaries or their respective businesses, prospects, properties, operations, assets or financial condition, that would be required to be disclosed by the Company under applicable securities laws at the time this representation is made or deemed made that has not been disclosed in this Agreement at least 1 calendar day prior to the date that this representation is made.

(j) Litigation. There is no action, suit, inquiry, notice of violation, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, an "Action") which (i) adversely affects or challenges the legality, validity or enforceability of any of the Transaction Documents or the Securities or (ii) could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any Subsidiary, nor any director or officer thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the Commission involving the Company or any current or former director or officer of the Company.

(k) Labor Relations. No labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company, which could reasonably be expected to result in a Material Adverse Effect. None of the Company's or its Subsidiaries' employees is a member of a union that relates to such employee's relationship with the Company or such Subsidiary, and neither the Company nor any of its Subsidiaries is a party to a collective bargaining agreement, and the Company and its Subsidiaries believe that their relationships with their employees are good. To the knowledge of the Company, no executive officer of the Company or any Subsidiary, is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement or non-competition agreement, or any other contract or agreement or any restrictive covenant in favor of any third party, and the continued employment of each such executive officer does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are in compliance with all U.S. federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(l) Compliance. Except as disclosed on Schedule 3.1(l) neither the Company nor any Subsidiary: (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any judgment, decree or order of any court, arbitrator or other governmental authority or (iii) is or has been in violation of any statute, rule, ordinance or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, except in each case as could not have or reasonably be expected to result in a Material Adverse Effect.

(m) Environmental Laws. The Company and its Subsidiaries (i) are in compliance with all federal, state, local and foreign laws relating to pollution or protection of human health or the environment (including ambient air, surface water, groundwater, land surface or subsurface strata), including laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "Hazardous Materials") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands, or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations, issued, entered, promulgated or approved thereunder ("Environmental Laws"); (ii) have received all permits licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses; and (iii) are in compliance with all terms and conditions of any such permit, license or approval where in each clause (i), (ii) and (iii), the failure to so comply could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

(n) Regulatory Permits. The Company and the Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such permits could not reasonably be expected to result in a Material Adverse Effect ("Material Permits"), and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any Material Permit.

(o) Title to Assets. Except as set forth on Schedule 3.1(o), the Company and the Subsidiaries have good and marketable title in fee simple to all real property owned by them and good and marketable title in all personal property owned by them that is material to the business of the Company and the Subsidiaries, in each case free and clear of all Liens, except for (i) Liens as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries and (ii) Liens for the payment of federal, state or other taxes, for which appropriate reserves have been made therefor in accordance with GAAP and, the payment of which is neither delinquent nor subject to penalties. Any real property and facilities held under lease by the Company and the Subsidiaries are held by them under valid, subsisting and enforceable leases with which the Company and the Subsidiaries are in compliance.

(p) Intellectual Property. Except as set forth on Schedule 3.1(p), the Company and the Subsidiaries have, or have rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other intellectual property rights and similar rights necessary or required for use in connection with their respective businesses and which the failure to so have could have a Material Adverse Effect (collectively, the “Intellectual Property Rights”). None of, and neither the Company nor any Subsidiary has received a notice (written or otherwise) that any of, the Intellectual Property Rights has expired, terminated or been abandoned, or is expected to expire or terminate or be abandoned, within two (2) years from the date of this Agreement. Neither the Company nor any Subsidiary has received a written notice of a claim or otherwise has any knowledge that the Intellectual Property Rights violate or infringe upon the rights of any Person, except as could not have or reasonably be expected to not have a Material Adverse Effect. To the knowledge of the Company, all such Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their intellectual properties, except where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(q) Insurance. The Company and the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company and the Subsidiaries are engaged. The Company shall put in place directors and officers insurance coverage at least equal to the aggregate Subscription Amount prior to Closing unless the Placement Agent confirms in a writing signed by its CEO that a lesser amount of coverage is acceptable. Neither the Company nor any Subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business without a significant increase in cost.

(r) Transactions with Affiliates and Employees. Except as set forth in Schedule 3.1(r), none of the officers or directors of the Company or any Subsidiary and, to the knowledge of the Company, none of the employees of the Company or any Subsidiary is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from providing for the borrowing of money from or lending of money to, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee, stockholder, member or partner, other than for (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) other employee benefits, including stock option agreements under any stock option plan of the Company.

(s) [reserved]

(t) Certain Fees. Except with respect to the fees and expenses payable to the Placement Agent as described in Section 5.2 hereto, no brokerage or finder's fees or commissions or other remuneration are or will be payable by the Company or any Subsidiaries directly or indirectly to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents. The Purchasers shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section that may be due in connection with the transactions contemplated by the Transaction Documents.

(u) Private Placement. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 3.2, no registration under the Securities Act is required for the offer and sale of the Securities by the Company to the Purchasers as contemplated hereby. The issuance and sale of the Securities hereunder does not contravene the rules and regulations of the Trading Market.

(v) Investment Company. The Company is not, and is not an Affiliate of, and immediately after receipt of payment for the Securities, will not be or be an Affiliate of, an "investment company" within the meaning of the Investment Company Act of 1940, as amended. The Company shall conduct its business in a manner so that it will not become an "investment company" subject to registration under the Investment Company Act of 1940, as amended.

(w) Registration Rights. No Person has any right to cause the Company or any Subsidiary to effect the registration under the Securities Act of any securities of the Company or any Subsidiaries.

(x) [reserved]

(y) [reserved]

(z) Disclosure. The Company understands and confirms that the Purchasers will rely on the foregoing representation in effecting transactions in securities of the Company. All of the disclosure furnished by or on behalf of the Company to the Purchasers regarding the Company and its Subsidiaries, their respective businesses and the transactions contemplated hereby, including the Transaction Documents and disclosure schedules to this Agreement, is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. The press releases disseminated by the Company during the twelve months preceding the date of this Agreement taken as a whole do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made and when made, not misleading. The Company acknowledges and agrees that no Purchaser makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3.2 hereof.

(aa) No Integrated Offering. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 3.2, neither the Company, nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Securities to be integrated with prior offerings by the Company for purposes of (i) the Securities Act which would require the registration of any such securities under the Securities Act, or (ii) any applicable shareholder approval provisions of any Trading Market on which any of the securities of the Company are listed or designated.

(bb) Solvency. Based on the consolidated financial condition of the Company as of the Closing Date, after giving effect to the receipt by the Company of the proceeds from the sale of the Minimum Amount of Securities hereunder, the Company will have sufficient cash to operate its business as currently operated for a period of three months from the initial Closing Date. The Company has no knowledge of any facts or circumstances which lead it to believe that it will file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within one year from the Closing Date. Schedule 3.1(bb) sets forth as of the date hereof all outstanding secured and unsecured Indebtedness of the Company or any Subsidiary, or for which the Company or any Subsidiary has commitments. For the purposes of this Agreement, "Indebtedness" means (x) any liabilities for borrowed money or amounts owed in excess of \$50,000 (other than trade accounts payable incurred in the ordinary course of business), (y) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Company's consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; and (z) the present value of any lease payments in excess of \$50,000 due under leases required to be capitalized in accordance with GAAP. Except as disclosed on Schedule 3.1(bb), neither the Company nor any Subsidiary is in default with respect to any Indebtedness.

(cc) Tax Status. Except as disclosed on Schedule 3.1(cc) and except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company and its Subsidiaries each (i) has made or filed all United States federal, state and local income and all foreign income and franchise tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations and (iii) has set aside on its books provision reasonably adequate for the payment of all material taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company or of any Subsidiary know of no basis for any such claim.

(dd) No General Solicitation. Neither the Company nor any Person acting on behalf of the Company has offered or sold any of the Securities by any form of general solicitation or general advertising. The Company has offered the Securities for sale only to the Purchasers and certain other “accredited investors” within the meaning of Rule 501 under the Securities Act.

(ee) Foreign Corrupt Practices. Neither the Company nor any Subsidiary, nor to the knowledge of the Company or any Subsidiary, any agent or other person acting on behalf of the Company or any Subsidiary, has (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company or any Subsidiary (or made by any person acting on its behalf of which the Company is aware) which is in violation of law or (iv) violated in any material respect any provision of FCPA.

(ff) Seniority. As of the Closing Date, except as provided in Schedule 3.1(ff), no Indebtedness or other claim against the Company is senior to the Debentures in right of payment, whether with respect to interest or upon liquidation or dissolution, or otherwise, other than indebtedness secured by purchase money security interests (which is senior only as to underlying assets covered thereby) and capital lease obligations (which is senior only as to the property covered thereby).

(gg) No Disagreements with Accountants and Lawyers. There are no disagreements of any kind presently existing, or reasonably anticipated by the Company to arise, between the Company and the accountants and lawyers formerly or presently employed by the Company and the Company is current with respect to any fees owed to its accountants and lawyers which could affect the Company’s ability to perform any of its obligations under any of the Transaction Documents.

(hh) Acknowledgment Regarding Purchasers’ Purchase of Securities. The Company acknowledges and agrees that each of the Purchasers is acting solely in the capacity of an arm’s length purchaser with respect to the Transaction Documents and the transactions contemplated thereby. The Company further acknowledges that no Purchaser is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by any Purchaser or any of their respective representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to the Purchasers’ purchase of the Securities. The Company further represents to each Purchaser that the Company’s decision to enter into this Agreement and the other Transaction Documents has been based solely on the independent evaluation of the transactions contemplated hereby by the Company and its representatives.

(ii) [reserved]

(jj) [reserved]

(kk) [reserved]

(ll) Office of Foreign Assets Control. Neither the Company nor any Subsidiary nor, to the Company's knowledge, any director, officer, agent, employee or affiliate of the Company or any Subsidiary is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC").

(mm) U.S. Real Property Holding Corporation. The Company is not and has never been a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended, and the Company shall so certify upon Purchaser's request.

(nn) Bank Holding Company Act. Neither the Company nor any of its Subsidiaries or Affiliates is subject to the Bank Holding Company Act of 1956, as amended (the "BHCA") and to regulation by the Board of Governors of the Federal Reserve System (the "Federal Reserve"). Neither the Company nor any of its Subsidiaries or Affiliates owns or controls, directly or indirectly, five percent (5%) or more of the outstanding shares of any class of voting securities or twenty-five percent or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. Neither the Company nor any of its Subsidiaries or Affiliates exercises a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.

(oo) Money Laundering. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes and applicable rules and regulations thereunder (collectively, the "Money Laundering Laws"), and no Action or Proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any Subsidiary with respect to the Money Laundering Laws is pending or, to the knowledge of the Company or any Subsidiary, threatened.

(pp) No Disqualification Events. With respect to the Securities to be offered and sold hereunder in reliance on Rule 506 under the Securities Act, none of the Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the offering hereunder, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the Securities Act) connected with the Company in any capacity at the time of sale (each, an "Issuer Covered Person" and, together, "Issuer Covered Persons") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "Disqualification Event"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Company has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to the Purchasers a copy of any disclosures provided thereunder.

(qq) Other Covered Persons. The Company is not aware of any person (other than any Issuer Covered Person) that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the sale of any Securities.

(rr) Notice of Disqualification Events. The Company will notify the Purchasers in writing, prior to the Closing Date of (i) any Disqualification Event relating to any Issuer Covered Person and (ii) any event that would, with the passage of time, become a Disqualification Event relating to any Issuer Covered Person.

3.2 Representations and Warranties of the Purchasers. Each Purchaser, for itself and for no other Purchaser, hereby represents and warrants as of the date hereof and as of the Closing Date to the Company as follows (unless as of a specific date therein, in which case they shall be accurate as of such date):

(a) Organization; Authority. Such Purchaser is either an individual or an entity duly incorporated or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation with full right, corporate, partnership, limited liability company or similar power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of the Transaction Documents and performance by such Purchaser of the transactions contemplated by the Transaction Documents have been duly authorized by all necessary corporate, partnership, limited liability company or similar action, as applicable, on the part of such Purchaser. Each Transaction Document to which it is a party has been duly executed by such Purchaser, and when delivered by such Purchaser in accordance with the terms hereof, will constitute the valid and legally binding obligation of such Purchaser, enforceable against it in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(b) Own Account. Such Purchaser understands that the Securities are "restricted securities" and have not been registered under the Securities Act or any applicable state securities law and is acquiring the Securities as principal for its own account and not with a view to or for distributing or reselling such Securities or any part thereof in violation of the Securities Act or any applicable state securities law, has no present intention of distributing any of such Securities in violation of the Securities Act or any applicable state securities law and has no direct or indirect arrangement or understandings with any other persons to distribute or regarding the distribution of such Securities in violation of the Securities Act or any applicable state securities law (this representation and warranty not limiting such Purchaser's right to sell the Securities pursuant to a registration statement covering the resale of such security or otherwise in compliance with applicable federal and state securities laws). Such Purchaser is acquiring the Securities hereunder in the ordinary course of its business.

(c) Purchaser Status. At the time such Purchaser was offered the Securities, it was, and as of the date hereof it is, and on each date on which it exercises any Warrants or converts any Debentures it will be either an “accredited investor” as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7) or (a)(8) under the Securities Act.

(d) Experience of Such Purchaser. Such Purchaser, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment. Such Purchaser is able to bear the economic risk of an investment in the Securities and, at the present time, is able to afford a complete loss of such investment.

(e) General Solicitation. Such Purchaser is not, to such Purchaser’s knowledge, purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or, to the knowledge of such Purchaser, any other general solicitation or general advertisement.

(f) Access to Information. Such Purchaser acknowledges that it has had the opportunity to review the Transaction Documents (including all exhibits and schedules thereto) and has been afforded (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Securities and the merits and risks of investing in the Securities; (ii) access to information about the Company and its financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment.

(g) [reserved]

The Company acknowledges and agrees that the representations contained in this Section 3.2 shall not modify, amend or affect such Purchaser’s right to rely on the Company’s representations and warranties contained in this Agreement or any representations and warranties contained in any other Transaction Document or any other document or instrument executed and/or delivered in connection with this Agreement or the consummation of the transactions contemplated hereby. Notwithstanding the foregoing, for the avoidance of doubt, nothing contained herein shall constitute a representation or warranty, or preclude any actions, with respect to locating or borrowing shares in order to effect Short Sales or similar transactions in the future.

**ARTICLE IV.
OTHER AGREEMENTS OF THE PARTIES**

4.1 Transfer Restrictions.

(a) The Securities may only be disposed of in compliance with state and federal securities laws. In connection with any transfer of Securities other than pursuant to an effective registration statement or Rule 144, to the Company or to an Affiliate of a Purchaser or in connection with a pledge as contemplated in Section 4.1(b), the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Securities under the Securities Act. As a condition of transfer, any such transferee shall agree in writing to be bound by the terms of this Agreement and shall have the rights and obligations of a Purchaser under this Agreement.

(b) The Purchasers agree to the imprinting, so long as is required by this Section 4.1, of a legend on any of the Securities in the following form:

[NEITHER] THIS SECURITY [NOR THE SECURITIES INTO WHICH THIS SECURITY IS [EXERCISABLE] [CONVERTIBLE] HAS [NOT] BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY [AND THE SECURITIES ISSUABLE UPON [EXERCISE] [CONVERSION] OF THIS SECURITY] MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT WITH A REGISTERED BROKER-DEALER OR OTHER LOAN WITH A FINANCIAL INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a) UNDER THE SECURITIES ACT OR OTHER LOAN SECURED BY SUCH SECURITIES.

The Company acknowledges and agrees that a Purchaser may from time-to-time pledge pursuant to a bona fide margin agreement with a registered broker-dealer or grant a security interest in some or all of the Securities to a financial institution that is an "accredited investor" as defined in Rule 501(a) under the Securities Act and, if required under the terms of such arrangement, such Purchaser may transfer pledged or secured Securities to the pledgees or secured parties. Such a pledge or transfer would not be subject to approval of the Company and no legal opinion of legal counsel of the pledgee, secured party or pledgor shall be required in connection therewith. Further, no notice shall be required of such pledge. At the appropriate Purchaser's expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Securities may reasonably request in connection with a pledge or transfer of the Securities, including, if the Securities have been registered for resale pursuant to a registration statement, the preparation and filing of any required prospectus supplement under Rule 424(b)(3) under the Securities Act or other applicable provision of the Securities Act to appropriately amend the list of selling stockholders thereunder.

(c) Certificates evidencing the Underlying Shares shall not contain any legend (including the legend set forth in Section 4.1(b) hereof): (i) while a registration statement covering the resale of such security is effective under the Securities Act, (ii) following any sale of such Underlying Shares pursuant to Rule 144 (assuming cashless exercise of the Warrants), or (iii) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission). The Company shall, at its expense, cause its counsel, or at the option of a Purchaser, counsel determined by such Purchaser, to issue a legal opinion to the Transfer Agent or the Purchaser promptly if required by the Transfer Agent to affect the removal of the legend hereunder, or if requested by a Purchaser, respectively subject to compliance with the Securities Act and/or Rule 144 (for the avoidance of doubt, the Company shall pay all costs associated with such opinions). If all or any portion of a Debenture is converted or Warrant is exercised at a time when there is an effective registration statement to cover the resale of the Underlying Shares, or if such Underlying Shares may be sold under Rule 144 or if such legend is not otherwise required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission) then such Underlying Shares shall be issued free of all legends. The Company agrees that at such time as such legend is no longer required under this Section 4.1(c), it will, no later than the earlier of (i) three (3) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined below) following the delivery by a Purchaser to the Company or the Transfer Agent of a certificate representing Underlying Shares, as applicable, issued with a restrictive legend (such date, the “Legend Removal Date”), deliver or cause to be delivered to such Purchaser a certificate representing such shares that is free from all restrictive and other legends. The Company may not make any notation on its records or give instructions to the Transfer Agent that enlarge the restrictions on transfer set forth in this Section 4. Certificates for Underlying Shares subject to legend removal hereunder shall be transmitted by the Transfer Agent to the Purchaser by crediting the account of the Purchaser’s prime broker with the Depository Trust Company System as directed by such Purchaser. As used herein, “Standard Settlement Period” means the standard settlement period, expressed in a number of Trading Days, on the Company’s primary Trading Market with respect to the Common Stock as in effect on the date of delivery of a certificate representing Underlying Shares, as applicable, issued with a restrictive legend.

(d) In addition to such Purchaser’s other available remedies, the Company shall pay to a Purchaser, in cash, (i) as partial liquidated damages and not as a penalty, for each \$1,000 of Underlying Shares (based on the VWAP of the Common Stock on the date such Securities are submitted to the Transfer Agent) delivered for removal of the restrictive legend and subject to Section 4.1(c), \$5 per Trading Day (increasing to \$10 per Trading Day five (5) Trading Days after such damages have begun to accrue) for each Trading Day after the Legend Removal Date until such certificate is delivered without a legend and (ii) if the Company fails to (a) issue and deliver (or cause to be delivered) to a Purchaser by the Legend Removal Date a certificate representing the Securities so delivered to the Company by such Purchaser that is free from all restrictive and other legends and (b) if after the Legend Removal Date such Purchaser purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such Purchaser of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock that such Purchaser anticipated receiving from the Company without any restrictive legend, then, an amount equal to the excess of such Purchaser’s total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including brokerage commissions and other out-of-pocket expenses, if any) (the “Buy-In Price”) over the product of (A) such number of Underlying Shares that the Company was required to deliver to such Purchaser by the Legend Removal Date multiplied by (B) the lowest closing sale price of the Common Stock on any Trading Day during the period commencing on the date of the delivery by such Purchaser to the Company of the applicable Underlying Shares (as the case may be) and ending on the date of such delivery and payment under this clause (ii).

(e) Each Purchaser, severally and not jointly with the other Purchasers, agrees with the Company that such Purchaser will sell any Securities pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if Securities are sold pursuant to a registration statement, they will be sold in compliance with the plan of distribution set forth therein, and acknowledges that the removal of the restrictive legend from certificates representing Securities as set forth in this Section 4.1 is predicated upon the Company's reliance upon this understanding.

4.2 Acknowledgment of Dilution. The Company acknowledges that the issuance of the Securities may result in dilution of the outstanding shares of Common Stock, which dilution may be substantial under certain market conditions. The Company further acknowledges that its obligations under the Transaction Documents, including, without limitation, its obligation to issue the Underlying Shares pursuant to the Transaction Documents, are unconditional and absolute and not subject to any right of set off, counterclaim, delay or reduction, regardless of the effect of any such dilution or any claim the Company may have against any Purchaser and regardless of the dilutive effect that such issuance may have on the ownership of the other stockholders of the Company.

4.3 Furnishing of Information; Public Information.

(a) Until the time that no Purchaser owns Securities, the Company covenants, upon consummation of the Qualified Offering, to maintain the registration of the Common Stock under Section 12(b) or 12(g) of the Exchange Act and to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act even if the Company is not then subject to the reporting requirements of the Exchange Act.

(b) At any time during the period commencing from the six (6) month anniversary of the date of the Qualified Offering and ending at such time that all of the Securities may be sold without the requirement for the Company to be in compliance with Rule 144(c)(1) and otherwise without restriction or limitation pursuant to Rule 144, if the Company (i) shall fail for any reason to satisfy the current public information requirement under Rule 144(c) or (ii) has ever been an issuer described in Rule 144 (i)(1)(i) or becomes an issuer in the future, and the Company shall fail to satisfy any condition set forth in Rule 144(i)(2) (a “Public Information Failure”) then, in addition to such Purchaser’s other available remedies, the Company shall pay to a Purchaser, in cash, as partial liquidated damages and not as a penalty, by reason of any such delay in or reduction of its ability to sell the Securities, an amount in cash equal to two percent (2.0%) of the aggregate Subscription Amount of such Purchaser’s Securities on the day of a Public Information Failure and on every thirtieth (30th) day (pro-rated for periods totaling less than thirty days) thereafter until the earlier of (a) the date such Public Information Failure is cured and (b) such time that such public information is no longer required for the Purchasers to transfer the Underlying Shares pursuant to Rule 144. The payments to which a Purchaser shall be entitled pursuant to this Section 4.3(b) are referred to herein as “Public Information Failure Payments.” Public Information Failure Payments shall be paid on the earlier of (i) the last day of the calendar month during which such Public Information Failure Payments are incurred and (ii) the third (3rd) Business Day after the event or failure giving rise to the Public Information Failure Payments is cured. In the event the Company fails to make Public Information Failure Payments in a timely manner, such Public Information Failure Payments shall bear interest at the rate of 1.5% per month (prorated for partial months) until paid in full. Nothing herein shall limit such Purchaser’s right to pursue actual damages for the Public Information Failure, and such Purchaser shall have the right to pursue all remedies available to it at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief.

4.4 Integration. The Company shall not sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Securities in a manner that would require the registration under the Securities Act of the sale of the Securities or that would be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any Trading Market such that it would require shareholder approval prior to the closing of such other transaction unless shareholder approval is obtained before the closing of such subsequent transaction.

4.5 Conversion and Exercise Procedures. Each of the form of Notice of Exercise included in the Warrants and the form of Notice of Conversion included in the Debentures set forth the totality of the procedures required of the Purchasers in order to exercise the Warrants or convert the Debentures. Without limiting the preceding sentences, no ink-original Notice of Exercise or Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise or Notice of Conversion form be required in order to exercise the Warrants or convert the Debentures. No additional legal opinion, other information or instructions shall be required of the Purchasers to exercise their Warrants or convert their Debentures. The Company shall honor exercises of the Warrants and conversions of the Debentures and shall deliver Underlying Shares in accordance with the terms, conditions and time periods set forth in the Transaction Documents.

4.6 Publicity. Following the consummation of a Qualified Offering, the Company represents to the Purchasers that it shall have publicly disclosed all material, non-public information delivered to any of the Purchasers by the Company or any of its Subsidiaries, or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents. In addition, effective upon the consummation of a Qualified Offering, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, agents, employees or Affiliates on the one hand, and any of the Purchasers or any of their Affiliates on the other hand, shall terminate. The Company and each Purchaser shall consult with each other in issuing any other press releases with respect to the transactions contemplated hereby, and neither the Company nor any Purchaser shall issue any such press release nor otherwise make any such public statement without the prior consent of the Company, with respect to any press release of any Purchaser, or without the prior consent of each Purchaser, with respect to any press release of the Company, which consent shall not unreasonably be withheld or delayed, except if such disclosure is required by law, in which case the disclosing party shall promptly provide the other party with prior notice of such public statement or communication. Notwithstanding the foregoing, the Company shall not publicly disclose the name of any Purchaser, or include the name of any Purchaser in any filing with the Commission or any regulatory agency or Trading Market, without the prior written consent of such Purchaser, except (a) as required by federal securities law in connection with the filing of final Transaction Documents with the Commission and (b) to the extent such disclosure is required by law or Trading Market regulations, in which case the Company shall provide the Purchasers with prior notice of such disclosure permitted under this clause.

4.7 Shareholder Rights Plan. No claim will be made or enforced by the Company or, with the consent of the Company, any other Person, that any Purchaser is an “Acquiring Person” under any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or similar anti-takeover plan or arrangement in effect or hereafter adopted by the Company, or that any Purchaser could be deemed to trigger the provisions of any such plan or arrangement, by virtue of receiving Securities under the Transaction Documents or under any other agreement between the Company and the Purchasers.

4.8 Non-Public Information. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, which shall be disclosed pursuant to Section 4.6, the Company covenants and agrees that following the consummation of a Qualified Offering, neither it, nor any other Person acting on its behalf will provide any Purchaser or its agents or counsel with any information that constitutes, or the Company reasonably believes constitutes, material non-public information, unless prior thereto such Purchaser shall have consented to the receipt of such information and agreed with the Company to keep such information confidential. The Company understands and confirms that each Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company. To the extent that the Company delivers any material, non-public information to a Purchaser without such Purchaser’s consent, the Company hereby covenants and agrees that such Purchaser shall not have any duty of confidentiality to the Company, any of its Subsidiaries, or any of their respective officers, directors, agents, employees or Affiliates, or a duty to the Company, any of its Subsidiaries or any of their respective officers, directors, agents, employees or Affiliates not to trade on the basis of, such material, non-public information, provided that the Purchaser shall remain subject to applicable law. The Company understands and confirms that each Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company.

4.9 Use of Proceeds. Except as set forth on Schedule 4.9 attached hereto, the Company shall use the net proceeds from the sale of the Securities hereunder for working capital purposes and shall not use such proceeds: (a) for the satisfaction of any portion of the Company's debt (other than payment of trade payables in the ordinary course of the Company's business and prior practices), (b) for the redemption of any Common Stock or Common Stock Equivalents, (c) for the settlement of any outstanding litigation, (d) in violation of FCPA or OFAC regulations or (e) to lend, give credit or make advances to any officers, directors, employees or affiliates of the Company other than loans or advances to Subsidiaries.

4.10 Indemnification of Purchasers. Subject to the provisions of this Section 4.10, the Company will indemnify and hold each Purchaser and its directors, officers, shareholders, members, partners, employees and agents (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title), each Person who controls such Purchaser (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, shareholders, agents, members, partners or employees (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title) of such controlling persons (each, a "Purchaser Party") harmless from any and all losses, liabilities, obligations, claims, contingencies, damages, costs and expenses, including all judgments, amounts paid in settlements, court costs and reasonable attorneys' fees and costs of investigation that any such Purchaser Party may suffer or incur as a result of or relating to (a) any breach of any of the representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents or (b) any action instituted against the Purchaser Parties in any capacity, or any of them or their respective Affiliates, by any stockholder of the Company who is not an Affiliate of such Purchaser Party, with respect to any of the transactions contemplated by the Transaction Documents (unless such action is solely based upon a material breach of such Purchaser Party's representations, warranties or covenants under the Transaction Documents or any agreements or understandings such Purchaser Party may have with any such stockholder or any violations by such Purchaser Party of state or federal securities laws or any conduct by such Purchaser Party which is finally judicially determined to constitute fraud, gross negligence or willful misconduct). If any action shall be brought against any Purchaser Party in respect of which indemnity may be sought pursuant to this Agreement, such Purchaser Party shall promptly notify the Company in writing, and the Company shall have the right to assume the defense thereof with counsel of its own choosing reasonably acceptable to the Purchaser Party. Any Purchaser Party shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Purchaser Party except to the extent that (i) the employment thereof has been specifically authorized by the Company in writing, (ii) the Company has failed after a reasonable period of time to assume such defense and to employ counsel or (iii) in such action there is, in the reasonable opinion of counsel, a material conflict on any material issue between the position of the Company and the position of such Purchaser Party, in which case the Company shall be responsible for the reasonable fees and expenses of no more than one such separate counsel. The Company will not be liable to any Purchaser Party under this Agreement (y) for any settlement by a Purchaser Party effected without the Company's prior written consent, which shall not be unreasonably withheld or delayed; or (z) to the extent, but only to the extent that a loss, claim, damage or liability is attributable to any Purchaser Party's breach of any of the representations, warranties, covenants or agreements made by such Purchaser Party in this Agreement or in the other Transaction Documents. The indemnification required by this Section 4.10 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or are incurred. The indemnity agreements contained herein shall be in addition to any cause of action or similar right of any Purchaser Party against the Company or others and any liabilities the Company may be subject to pursuant to law.

4.11 Reservation and Listing of Securities.

(a) Subject to Section 4.11(b), the Company shall maintain a reserve of the Required Minimum from its duly authorized shares of Common Stock for issuance pursuant to the Transaction Documents in such amount as may then be required to fulfill its obligations in full under the Transaction Documents.

(b) If, on any date, the number of authorized but unissued (and otherwise unreserved) shares of Common Stock is less than the Required Minimum on such date, then the Board of Directors shall use commercially reasonable efforts to amend the Company's certificate or articles of incorporation to increase the number of authorized but unissued shares of Common Stock to at least the Required Minimum at such time, as soon as possible and in any event not later than the 90th day after such date.

(c) Upon consummation of the Qualified Offering, the Company shall, if applicable: (i) in the time and manner required by the principal Trading Market, prepare and file with such Trading Market an additional shares listing application covering a number of shares of Common Stock at least equal to the Required Minimum on the date of such application, (ii) take all steps necessary to cause such shares of Common Stock to be approved for listing or quotation on such Trading Market as soon as possible thereafter, (iii) provide to the Purchasers evidence of such listing or quotation and (iv) maintain the listing or quotation of such Common Stock on any date at least equal to the Required Minimum on such date on such Trading Market or another Trading Market. The Company agrees, upon consummation of the Qualified Offering, to maintain the eligibility of the Common Stock for electronic transfer through the Depository Trust Company or another established clearing corporation, including, without limitation, by timely payment of fees to the Depository Trust Company or such other established clearing corporation in connection with such electronic transfer.

4.12 Participation in Future Financing.

(a) From the date hereof until the date that is the 12-month anniversary of the Closing Date, upon any issuance by the Company or any of its Subsidiaries of Common Stock or Common Stock Equivalents for consideration (a "Subsequent Financing"), each Purchaser shall have the right to participate in up to an amount of the Subsequent Financing equal to 33% of the Subsequent Financing (the "Participation Maximum") on the same terms, conditions and price provided for in the Subsequent Financing. Provided, however, that this Section 4.12 does not apply to any securities offerings of the Company with a broker-dealer acting either as principal or agent. Notwithstanding the foregoing, in the event that any Purchaser shall remain a shareholder of record the Company, on or after the 12-month anniversary of the Closing Date, the participation rights provided in this section shall survive for an additional 12-month period for such Purchaser(s).

(b) Between the time period of 4:00 pm (New York City time) and 6:00 pm (New York City time) on the Trading Day immediately prior to the Trading Day of the expected announcement of the Subsequent Financing (or, if the Trading Day of the expected announcement of the Subsequent Financing is the first Trading Day following a holiday or a weekend (including a holiday weekend), between the time period of 4:00 pm (New York City time) on the Trading Day immediately prior to such holiday or weekend and 2:00 pm (New York City time) on the day immediately prior to the Trading Day of the expected announcement of the Subsequent Financing), the Company shall deliver to each Purchaser a written notice of the Company's intention to effect a Subsequent Financing (a "Subsequent Financing Notice"), which notice shall describe in reasonable detail the proposed terms of such Subsequent Financing, the amount of proceeds intended to be raised thereunder and the Person or Persons through or with whom such Subsequent Financing is proposed to be effected and shall include a term sheet and transaction documents relating thereto as an attachment.

(c) Any Purchaser desiring to participate in such Subsequent Financing must provide written notice to the Company by 6:30 am (New York City time) on the Trading Day following the date on which the Subsequent Financing Notice is delivered to such Purchaser (the "Notice Termination Time") that such Purchaser is willing to participate in the Subsequent Financing, the amount of such Purchaser's participation, and representing and warranting that such Purchaser has such funds ready, willing, and available for investment on the terms set forth in the Subsequent Financing Notice. If the Company receives no such notice from a Purchaser as of such Notice Termination Time, such Purchaser shall be deemed to have notified the Company that it does not elect to participate in such Subsequent Financing.

(d) If, by the Notice Termination Time, notifications by the Purchasers of their willingness to participate in the Subsequent Financing (or to cause their designees to participate) is, in the aggregate, less than the total amount of the Subsequent Financing, then the Company may affect the remaining portion of such Subsequent Financing on the terms and with the Persons set forth in the Subsequent Financing Notice.

(e) If, by the Notice Termination Time, the Company receives responses to a Subsequent Financing Notice from Purchasers seeking to purchase more than the aggregate amount of the Participation Maximum, each such Purchaser shall have the right to purchase its Pro Rata Portion (as defined below) of the Participation Maximum. "Pro Rata Portion" means the ratio of (x) the Subscription Amount of Securities purchased on the Closing Date by a Purchaser participating under this Section 4.12 and (y) the sum of the aggregate Subscription Amounts of Securities purchased on the Closing Date by all Purchasers participating under this Section 4.12.

(f) The Company must provide the Purchasers with a second Subsequent Financing Notice, and the Purchasers will again have the right of participation set forth above in this Section 4.12, if the definitive agreement related to the initial Subsequent Financing Notice is not entered into for any reason on the terms set forth in such Subsequent Financing Notice within two (2) Trading Days after the date of delivery of the initial Subsequent Financing Notice.

(g) The Company and each Purchaser agree that, if any Purchaser elects to participate in the Subsequent Financing, the transaction documents related to the Subsequent Financing shall not include any term or provision that, directly or indirectly, will, or is intended to, exclude one or more of the Purchasers from participating in a Subsequent Financing, including, but not limited to, provisions whereby such Purchaser shall be required to agree to any restrictions on trading as to any of the Securities purchased hereunder or be required to consent to any amendment to or termination of, or grant any waiver, release or the like under or in connection with, this Agreement, without the prior written consent of such Purchaser. In addition, if a Qualified Financing has been consummated prior to the Subsequent Financing, the Company and each Purchaser agree that, in connection with a Subsequent Financing, the transaction documents related to the Subsequent Financing shall include a requirement for the Company to issue a widely disseminated press release by 9:30 am (New York City time) on the Trading Day of execution of the transaction documents in such Subsequent Financing (or, if the date of execution is not a Trading Day, on the immediately following Trading Day) that discloses the material terms of the transactions contemplated by the transaction documents in such Subsequent Financing.

(h) Notwithstanding anything to the contrary in this Section 4.12 and unless otherwise agreed to by such Purchaser, if a Qualified Financing has been consummated prior to the Subsequent Financing, the Company shall either confirm in writing to such Purchaser that the transaction with respect to the Subsequent Financing has been abandoned or shall publicly disclose its intention to issue the securities in the Subsequent Financing, in either case in such a manner such that such Purchaser will not be in possession of any material, non-public information, by 9:30 am (New York City time) on the second (2nd) Trading Day following date of delivery of the Subsequent Financing Notice. If by 9:30 am (New York City time) on such second (2nd) Trading Day, no public disclosure regarding a transaction with respect to the Subsequent Financing has been made, and no notice regarding the abandonment of such transaction has been received by such Purchaser, such transaction shall be deemed to have been abandoned and such Purchaser shall not be deemed to be in possession of any material, non-public information with respect to the Company or any of its Subsidiaries.

(i) Notwithstanding the foregoing, this Section 4.12 shall not apply in respect of an Exempt Issuance, a Qualified Offering or any other public offering of Common Stock pursuant to a Registration Statement on Form S-1 or Form S-3.

4.13 Subsequent Equity Sales.

(a) From the date hereof until 180 days after the Closing Date, neither the Company nor any Subsidiary shall issue, enter into any agreement to issue or announce the issuance or proposed issuance of any shares of Common Stock or Common Stock Equivalents, except as set forth in subsection 4.13(b) below.

(b) Notwithstanding the foregoing, this Section 4.13 shall not apply in respect of Qualified Offering or an Exempt Issuance.

4.14 Equal Treatment of Purchasers. No consideration (including any modification of any Transaction Document) shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of the Transaction Documents unless the same consideration is also offered to all of the parties to such Transaction Documents. Further, the Company shall not make any payment of principal or interest on the Debentures in amounts which are disproportionate to the respective principal amounts outstanding on the Debentures at any applicable time. For clarification purposes, this provision constitutes a separate right granted to each Purchaser by the Company and negotiated separately by each Purchaser, and is intended for the Company to treat the Purchasers as a class and shall not in any way be construed as the Purchasers acting in concert or as a group with respect to the purchase, disposition or voting of Securities or otherwise. Notwithstanding the foregoing, a party to the Transaction Documents may enter into agreements, amend or consent to a waiver or modification of provisions of the Transaction Documents without offering the same terms or extending the same agreements to all parties, provided, that the terms of the agreement, amendment, waiver or modification at issue is not more favorable than the terms which are applicable to each other party or will serve to adversely affect the other parties in any way.

4.15 Certain Transactions and Confidentiality. Each Purchaser, severally and not jointly with the other Purchasers, covenants that neither it, nor any Affiliate acting on its behalf or pursuant to any understanding with it will execute any purchases or sales, including Short Sales, of any of the Company's securities during the period commencing with the execution of this Agreement and ending at such time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.6. Each Purchaser, severally and not jointly with the other Purchasers, covenants that until such time as the transactions contemplated by this Agreement are publicly disclosed by the Company pursuant to the initial press release as described in Section 4.6, such Purchaser will maintain the confidentiality of the existence and terms of this transaction. Notwithstanding the foregoing, and notwithstanding anything contained in this Agreement to the contrary, the Company expressly acknowledges and agrees that (i) no Purchaser makes any representation, warranty or covenant hereby that it will not engage in effecting transactions in any securities of the Company after the time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.6, (ii) no Purchaser shall be restricted or prohibited from effecting any transactions in any securities of the Company in accordance with applicable securities laws from and after the time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.6 and (iii) no Purchaser shall have any duty of confidentiality or duty not to trade in the securities of the Company to the Company or its Subsidiaries after the issuance of the initial press release as described in Section 4.6. Notwithstanding the foregoing, in the case of a Purchaser that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Purchaser's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of such Purchaser's assets, the covenant set forth above shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to purchase the Securities covered by this Agreement.

4.16 Form D; Blue Sky Filings. The Company agrees to timely file a Form D with respect to the Securities as required under Regulation D and to provide a copy thereof, promptly upon request of any Purchaser. The Company shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to qualify the Securities for, sale to the Purchasers at the Closing under applicable securities or “Blue Sky” laws of the states of the United States, and shall provide evidence of such actions promptly upon request of any Purchaser.

4.17 Capital Changes. Except in connection with the Qualified Offering, until the 18- month anniversary of the Closing Date, the Company shall not undertake a reverse or forward stock split or reclassification of the Common Stock without the prior written consent of the Purchasers holding a majority in principal amount outstanding of the Debentures.

4.18 [Reserved]

4.19 Purchaser Lock-Up. On the date of this Agreement, each of the Purchasers covenants and agrees to enter into the Purchaser Lock-Up Agreement. In connection with the closing of a Qualified Offering, each of the Purchasers covenants and agrees to enter into a standard lock-up agreement, solely with respect to the Securities, in a form reasonably agreed to by the Purchasers, that shall provide that for a period beginning on the closing date of a Qualified Offering and ending on the six (6) month anniversary of such closing date, such Purchasers shall not sell into the market pursuant to Rule 144 or pursuant to a then effective registration statement any of the Securities.

4.20 Buyout Transaction. Notwithstanding anything in this Agreement or the Transaction Documents to the contrary, the Company shall be permitted to effectuate a Buyout Transaction without the consent of the Purchasers and such Buyout Transaction shall not be deemed a breach of any covenant or term contained in this Agreement.

ARTICLE V. MISCELLANEOUS

5.1 Termination. This Agreement may be terminated by any Purchaser, as to such Purchaser’s obligations hereunder only and without any effect whatsoever on the obligations between the Company and the other Purchasers, by written notice to the other parties, if the Closing has not been consummated on or before the fifth (5th) Trading Day following the date hereof, provided, however, that no such termination will affect the right of any party to sue for any breach by any other party (or parties).

5.2 Fees and Expenses. At the Closing, the Company has agreed to reimburse the Placement Agent the non-accountable sum of \$25,000 for its non-legal fees and expenses and \$25,000 for its legal fees and expenses. Except as expressly set forth in the Transaction Documents to the contrary, each party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Agreement. The Company shall pay all Transfer Agent fees (including, without limitation, any fees required for same-day processing of any instruction letter delivered by the Company and any conversion delivered by a Purchaser), stamp taxes and other taxes and duties levied in connection with the delivery of any Securities to the Purchasers. In addition, Joseph Gunnar & Co., LLC is acting as placement agent for this private offering pursuant to a placement agency agreement with the Company and will receive cash and warrant compensation on amounts closed on pursuant to this Agreement, as well as an expense reimbursement from the Company.

5.3 Entire Agreement. The Transaction Documents, together with the exhibits and schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules.

5.4 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of: (a) the time of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment at the email address as set forth on the signature pages attached hereto at or prior to 5:30 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the time of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment as set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (c) the second (2nd) Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as set forth on the signature pages attached hereto. To the extent that any notice provided pursuant to any Transaction Document constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K if the Company is then an SEC reporting company.

5.5 Amendments; Waivers. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and Purchasers which purchased at least 50.01% in interest of the Debentures based on the initial Subscription Amounts hereunder or, in the case of a waiver, by the party against whom enforcement of any such waived provision is sought, provided that if any amendment, modification or waiver disproportionately and adversely impacts a Purchaser (or group of Purchasers), the consent of such disproportionately impacted Purchaser (or group of Purchasers) shall also be required. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right. Any proposed amendment or waiver that disproportionately, materially and adversely affects the rights and obligations of any Purchaser relative to the comparable rights and obligations of the other Purchasers shall require the prior written consent of such adversely affected Purchaser. Any amendment effected in accordance with this Section 5.5 shall be binding upon each Purchaser and holder of Securities and the Company.

5.6 Headings. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

5.7 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of each Purchaser (other than by merger). Any Purchaser may assign any or all of its rights under this Agreement to any Person to whom such Purchaser assigns or transfers any Securities, provided that such transferee agrees in writing to be bound, with respect to the transferred Securities, by the provisions of the Transaction Documents that apply to the "Purchasers."

5.8 No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise set forth in Section 4.10. Notwithstanding the foregoing, the Placement Agent shall be deemed a third-party beneficiary of the representations and warranties of the Company as contained in Section 3.1 of this Agreement and shall have the right to enforce such provisions directly to the extent it may deem such enforcement necessary or advisable to protect its rights.

5.9 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Action or Proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such Action or Proceeding is improper or is an inconvenient venue for such Proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such Action or Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If any party shall commence an Action or Proceeding to enforce any provisions of the Transaction Documents, then, in addition to the obligations of the Company under Section 4.10, the prevailing party in such Action or Proceeding shall be reimbursed by the non-prevailing party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such Action or Proceeding.

5.10 Survival. The representations and warranties contained herein shall survive the Closing and the delivery of the Securities.

5.11 Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to each other party, it being understood that the parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

5.12 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

5.13 Rescission and Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) any of the other Transaction Documents, whenever any Purchaser exercises a right, election, demand or option under a Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then such Purchaser may rescind or withdraw, in its sole discretion from time-to-time upon written notice to the Company, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights; provided, however, that, in the case of a rescission of a conversion of a Debenture or exercise of a Warrant, the terms of the Debenture or Warrant as applicable will control.

5.14 Replacement of Securities. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof (in the case of mutilation), or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction. The applicant for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs (including customary indemnity) associated with the issuance of such replacement Securities.

5.15 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of the Purchasers and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations contained in the Transaction Documents and hereby agree to waive and not to assert in any Action for specific performance of any such obligation the defense that a remedy at law would be adequate.

5.16 Payment Set Aside. To the extent that the Company makes a payment or payments to any Purchaser pursuant to any Transaction Document or a Purchaser enforces or exercises its rights thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

5.17 Usury. To the extent it may lawfully do so, the Company hereby agrees not to insist upon or plead or in any manner whatsoever claim, and will resist any and all efforts to be compelled to take the benefit or advantage of, usury laws wherever enacted, now or at any time hereafter in force, in connection with any Action or Proceeding that may be brought by any Purchaser in order to enforce any right or remedy under any Transaction Document. Notwithstanding any provision to the contrary contained in any Transaction Document, it is expressly agreed and provided that the total liability of the Company under the Transaction Documents for payments in the nature of interest shall not exceed the maximum lawful rate authorized under applicable law (the "Maximum Rate"), and, without limiting the foregoing, in no event shall any rate of interest or default interest, or both of them, when aggregated with any other sums in the nature of interest that the Company may be obligated to pay under the Transaction Documents exceed such Maximum Rate. It is agreed that if the maximum contract rate of interest allowed by law and applicable to the Transaction Documents is increased or decreased by statute or any official governmental action subsequent to the date hereof, the new maximum contract rate of interest allowed by law will be the Maximum Rate applicable to the Transaction Documents from the effective date thereof forward, unless such application is precluded by applicable law. If under any circumstances whatsoever, interest in excess of the Maximum Rate is paid by the Company to any Purchaser with respect to indebtedness evidenced by the Transaction Documents, such excess shall be applied by such Purchaser to the unpaid principal balance of any such indebtedness or be refunded to the Company, the manner of handling such excess to be at such Purchaser's election.

5.18 Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under any Transaction Document are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance or non-performance of the obligations of any other Purchaser under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Purchaser pursuant hereto or thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Purchaser shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Purchaser to be joined as an additional party in any Proceeding for such purpose. Each Purchaser has been represented by its own separate legal counsel in its review and negotiation of the Transaction Documents. The Company has elected to provide all Purchasers with the same terms and Transaction Documents for the convenience of the Company and not because it was required or requested to do so by any of the Purchasers. It is expressly understood and agreed that each provision contained in this Agreement and in each other Transaction Document is between the Company and a Purchaser, solely, and not between the Company and the Purchasers collectively and not between and among the Purchasers.

5.19 Liquidated Damages. The Company's obligations to pay any partial liquidated damages or other amounts owing under the Transaction Documents is a continuing obligation of the Company and shall not terminate until all unpaid partial liquidated damages and other amounts have been paid notwithstanding the fact that the instrument or security pursuant to which such partial liquidated damages or other amounts are due and payable shall have been canceled.

5.20 Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

5.21 Construction. The parties agree that each of them and/or their respective counsel have reviewed and had an opportunity to revise the Transaction Documents and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Transaction Documents or any amendments thereto. In addition, each and every reference to share prices and shares of Common Stock in any Transaction Document shall be subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the date of this Agreement.

5.22 WAIVER OF JURY TRIAL. IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, THE PARTIES EACH KNOWINGLY AND INTENTIONALLY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND EXPRESSLY WAIVES FOREVER TRIAL BY JURY.

(Signature Pages Follow)

IN WITNESS WHEREOF, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

FOXO TECHNOLOGIES, INC.

Address for Notice:

By:

Name: Jon R. Sabes
Title: Chief Executive Officer

Stinson LLP

With a copy to (which shall not constitute notice):

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK SIGNATURE PAGE FOR PURCHASER FOLLOWS]

[PURCHASER SIGNATURE PAGES TO SECURITIES PURCHASE AGREEMENT]

IN WITNESS WHEREOF, the undersigned have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

Name of Purchaser: _____

Signature of Authorized Signatory of Purchaser: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

Email Address of Authorized Signatory: _____

Facsimile Number of Authorized Signatory: _____

Address for Notice to Purchaser: _____

Address for Delivery of Securities to Purchaser (if not same as address for notice):

Subscription Amount: \$ _____

Principal Amount (*1.125 x Subscription Amount*): \$ _____

Warrant Shares: _____

EIN Number: _____

[SIGNATURE PAGES CONTINUE]

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement") is by and between FOXO BioScience LLC, a Delaware limited liability company (the "Company"), and Jon Sabes ("Employee"), and entered into effective as of April 22, 2020 (the "Effective Date").

INTRODUCTION

The Company is a life science technology company committed to commercializing epigenetic and related science and technology (the "Business"). Employee desires to serve the Company in such role and provide the Company with such covenants. Accordingly, the parties wish to enter into this Agreement setting forth their respective rights and obligations.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants set forth herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Certain Definitions.

1.1 "Board" means the Board of Directors of FOXO BioScience LLC.

1.2 "Cause" means any one or more of the following: (a) the commission by Employee of an act relating to Employee's duties constituting a felony under the laws of the United States or any state or political subdivision thereof or any other jurisdiction; (b) the commission by Employee of an act constituting a breach of fiduciary duty, willful misconduct, or gross negligence; (c) the commission by Employee of an act of fraud, dishonesty or misrepresentation related to Employee's duties that is detrimental to the Business; or (d) a material breach by Employee of his obligations under this Agreement.

1.3 "Code" means the Internal Revenue Code of 1986, as amended, including and succeeding provisions of law and any regulations promulgated by the United States Treasury Department thereunder.

1.4 "Company" means FOXO BioScience LLC, a Delaware limited liability company, and all of its subsidiaries and affiliates.

1.5 "Employment Period" means the employment term as defined under Section 7 this Agreement.

1.6 "Good Reason" means a resignation by Employee of his employment hereunder upon the occurrence of a material breach by the Company of any of its obligations contained in this Agreement that to the extent an act or omission giving rise to cause to the material breach is not reasonably susceptible to cure, the Company shall be given a reasonable opportunity, not to exceed thirty (30) days, after written notice by the Employee to the Company to cure such act or omission.

2. Employment and Duties.

2.1 The Company agrees to continue to employ Employee for the Employment Period, and Employee agrees to remain in the employ of the Company for the Employment Period. The term of this Agreement shall continue as described in, and until such time as the employment of Employee is terminated pursuant to, Section 7 below.

2.2 The Company is employing Employee hereunder as for the position described in Exhibit A and is expected to perform and fulfill job functions commonly associated with such positions on behalf of the Company. In this regard, Employee agrees to perform such duties and responsibilities, in good faith and for the benefit of the Company, as are prescribed for him under this Agreement, the Company's corporate bylaws, and as otherwise directed by the Board. The Employee shall report to the Board, and the compensation shall be determined by the Compensation Committee of the Board.

2.3 Employee shall reasonably allocate his business time, attention, energies and skills to the Company and the Business; provided, however, that Employee shall nonetheless be permitted to engage in other business activities as well as participate in social, civic or professional associations or engage in passive outside investment activities which may require a limited portion of time and effort to manage (consistent at all times with Company's policies and procedures), so long as such activities do not materially interfere with the performance of Employee's duties nor compete, in any way, with the products or services offered by or through Company.

2.4 Employee will be permitted to locate and work at a location of Employee's sole discretion.

3. Compensation, Expenses, Benefits. For services rendered by Employee during the Employment Period, the Company shall provide the Employee with the elements of compensation as set forth in Exhibit A.

3.1 Simultaneous to the execution of this Agreement, shall be execution and delivery of a Profits Interest Agreement in the form attached hereto as Exhibit B (such incentive, the "Profits Interest"), the purpose and intent of which is to enable Employee to participate in the economic growth of value of the Business during the Initial Term of this Agreement.

3.2 Employee shall be entitled during the Employment Period to participate in all current human resource benefit programs made available from time to time to other management-level employees of Company and its subsidiaries.

3.3 Employee and Employee's qualified family members, as the case may be, shall be eligible to participate in, and shall receive all benefits under, the human resource benefit programs made available from time to time to other management-level employees of the Company and its subsidiaries.

3.4 As it relates to travel and vacation, consistent with prior practice Employee may operate on the basis of freedom to operate with no limits placed on vacation or travel relative to the execution of the role and responsibilities as Chief Executive Officer; provided, however, that Employee shall be accountable to the Board and Company's employees in the performance as Chief Executive Officer.

3.5 Employee shall be entitled to receive reimbursement for all reasonable expenses incurred by Employee in connection with carrying out the position of Chief Executive Officer on behalf of the Company and its affiliates which shall reimbursement for private travel including the family members of a Employee for both business and personal use, or social club memberships.

3.6 Employee shall be entitled to participate in all employee benefit plans and programs made available by the Company.

3.7 Employee shall be entitled to Company office space and access to needed technology systems and telephony services necessary for any family office or related business of Employee.

3.8 All compensation payments to Employee are guaranteed by the Company.

4. Inventions.

4.1 Employee agrees that any Invention, as defined below, shall be the sole and exclusive property of the Company, and further agrees to: (a) promptly and fully inform the Company in writing of any such Inventions; (b) assign to the Company all of Employee's rights in and to such Inventions, and to applications for patents and copyright registrations and to patents and copyright registrations granted upon such Inventions in the United States or in any foreign country; and (c) promptly acknowledge and deliver to the Company, without charge to the Company but at the Company's expense, such written instruments and perform such other acts as may be necessary, in the reasonable opinion of the Company, to obtain and maintain patents and copyright registrations and to vest the entire rights, interest in and title thereto in the Company.

4.2 Employee and the Company understand that the provisions of this Agreement requiring assignment of Inventions to the Company will not apply to any particular Invention that meets each and all of the following criteria: (a) Employee develops entirely on his own time, completely outside of Employee's normal working hours; (b) Employee develops related to the work that is disclosed and approved by the Board without using Company equipment, supplies, facilities or trade secret or Confidential Information, as defined below; or (c) does not result from any work performed by Employee for the Company. Any such Invention meeting all of the criteria set forth in clauses (a) through (c) above will be owned entirely by Employee, even if developed by Employee during the Employment Period or otherwise during the time period of his employment or association with the Company. Finally, Employee agrees and covenants that he will not individually file any patent applications relating to Inventions without first obtaining an express release from a duly authorized Company representative according to the limitations specified in (b) above.

4.3 For purposes of this Agreement, the term "Inventions" means all discoveries, improvements, inventions, ideas and works of authorship, whether patentable or copyrightable, conceived or made by Employee either solely or jointly with others, and relating to any consultation, work or services performed by Employee with, for on behalf of or in conjunction with the Company or based on or derived from Confidential Information.

5. Confidential Information.

5.1 Employee will hold all Confidential Information, as defined below, in the strictest confidence and never use, disclose or publish any Confidential Information in a manner that is detrimental to the Company. Employee agrees to maintain control over any Confidential Information obtained prior to or during the term of this Agreement, and restrict access thereto to the Company's employees, agents or other associated parties who have a need to use such Confidential Information for its intended purpose.

5.2 Promptly upon the Company's written request (but in any event within ten days), all records and any compositions, articles, devices and other items which disclose or embody Confidential Information in Employee's possession, including all copies or specimens thereof, regardless of whether prepared or made by Employee or by others, will be destroyed by Employee and Employee will certify in writing to the Company that he has destroyed all Confidential Information and embodiments thereof as required under this Agreement.

5.3 For purposes of this Agreement, the term "Confidential Information" shall mean all information developed by Employee as a result of his work with, for, on behalf of, or in conjunction with, the Company and any information relating to the Company's processes and services, including information relating to research, know-how, formulae, product or service ideas, inventions, trade secrets, patents, patent applications, systems, products, programs and techniques and any secret, proprietary or confidential information, knowledge or data of the Company, except such information that was developed by Employee prior to or separate from his employment by the Company. All information disclosed to Employee or to which Employee obtains access, whether originated by Employee or by others, and which is treated by the Company as "Confidential Information" or which Employee has a reasonable basis to believe is "Confidential Information," will be presumed to be "Confidential Information" for purposes of this Agreement. Notwithstanding the foregoing, the term "Confidential Information" will not apply to information which (i) Employee can establish by documentation was known to Employee prior to its receipt by Employee from the Company, (ii) is lawfully disclosed to Employee by a third party not deriving such information from the Company, (iii) is presently in the public domain or becomes a part of the public domain through no fault of Employee, or (iv) is required to be disclosed pursuant to applicable law, rule, regulation, or court or administrative order; provided, however, that Employee shall take reasonable steps to obtain confidential treatment for such items and shall promptly advise the Company of Employee's notice of any such requirement in order to permit the Company to obtain such confidential treatment on its own behalf.

6. No Solicitation of Customers or Employees; Restrictive Covenant. Employee acknowledges that the Company has invested and will continue to invest substantial time, effort and expense in acquiring and compiling its confidential, proprietary and trade secret information and in assembling its present staff of personnel. In order to protect the business value of the Company's confidential, proprietary and trade secret information, during Employee's employment with the Company and for twelve (12) months immediately following the termination of that employment with the Company, Employee agrees: (a) that all information regarding actual or prospective (i) partners of the Company (including but not limited to financiers, reinsurance companies, insurance companies, digital start-ups, research companies, academic institutions, and testing/processing companies) or (ii) customers of the Company, of which Employee learns during his employment with the Company, constitutes "Confidential Information" of the Company; (b) not to, directly or indirectly, induce or solicit any employees of the Company or its affiliates to leave their employment with the Company or any of its affiliates without the unanimous prior written consent of the Board. Each of the restrictive covenants set forth above are separate and severable covenants under this Section 6.

7. Termination. The initial term of this Agreement will begin on the date first written above and shall continue until the five-year anniversary of such date ("Initial Term") and shall automatically renew for five year terms thereafter ("Renewal Terms") (collectively the Initial Term and Renewal Terms referred to herein as "Employment Period"). Nevertheless, Employee's employment under this Agreement may be earlier terminated in any of the followings ways: (a) by the Board or Employee by providing written notice no less than thirty (30) days prior to the completion of the Initial Term or a Renewal Term; (b) immediately and automatically upon Employee's death; (c) by the Board, upon not less than fourteen (14) days prior written notice to Employee, as a result of Employee's incapacity due to physical or mental illness or injury resulting in Employee's absence from his full-time duties hereunder for four (4) consecutive months, subject to Employee's right to cure during the 14-day period; (d) by the Board immediately for Cause; (e) by the Board upon not less than fourteen (14) days prior written notice to Employee for any reason or no reason; (f) by Employee immediately for Good Reason; or (g) by Employee upon not less than ninety (90) days prior written notice to the Company for any reason or no reason.

8. Effects of Termination. Following any termination of Employee's employment under this Agreement, all compensation and benefits provided to Employee under this Agreement shall cease to accrue as of the date of such termination, except as set forth in the paragraphs below.

8.1 In the case of a termination arising under Section 7(b) from Employee's death or under Section 7(c) from Employee's incapacity, the Company shall pay to the estate of Employee an amount equal to Employee's then current Base Salary through the balance of the Agreement, including any earned but unpaid annual compensation and continue the welfare benefit programs contemplated under Section 3.5 above, including paying all premiums for coverage for Employee's dependent family members under all health, hospitalization, disability, dental, life and other insurance plans that the Company maintained at the time of Employee's death.

8.2 In the case of a termination by the Board (i) under Section 7(a) from the Company without a Renewal Term; or (ii) under Section 7(e) from the Company's termination without Cause; then, any rights under the Profits Interest Agreement or any subsequent equity agreements shall immediately vest as specified in those agreements, and Employee shall receive a severance equal to thirty-six (36) months of base salary.

8.3 In the case of a termination arising under Section 7(d) from the Company's termination with Cause or under Section 7(g) from the resignation of the Employee, then (a) no severance or continued benefits shall be due to Employee.

9. Return of Company Property. All correspondence, reports, records, charts, advertising materials, designs, patents, business plans, financial statements, manuals, memoranda, lists, and other personal property of the Company or its affiliates and in the possession of Employee shall be and remain the property of the Company and its affiliates, as applicable. Any such documentation, information or property that is in the possession of Employee shall, at the request of Company, be delivered promptly to the Company upon termination of Employee's employment.

10. Non-Competition.

10.1 In consideration of the various benefits provided by the Company to Employee under this Agreement, Employee agrees to be bound by the restrictive covenant set forth in this Section. Employee recognizes and acknowledges the competitive and proprietary nature of the Business. Accordingly, Employee agrees that, during the term of this Agreement, Employee shall not, without the prior written consent of the Company (which the Company shall not unreasonably withhold or condition), for himself or on behalf of any other person or entity, directly or indirectly, either as principal, agent, stockholder, lender, consultant, officer, director, employee, agent, representative or in any other capacity, own, manage, operate or control, or be concerned, connected or employed by, or otherwise associate in any manner with, or engage in or have any financial interest in, any enterprise engaging in a Business that competes with the Company.

11. Indemnification. If Employee is made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than (i) an action directly by the Company against Employee, and other than (ii) a threatened, pending or completed suit or proceeding brought against Employee and/or the Company by a third-party and which obligates Employee to provide the Company indemnity under Section 13 below), by reason of or in connection with the fact that Employee is or was performing services for the Company under this Agreement, then the Company shall indemnify Employee against all expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement, as actually and reasonably incurred by Employee in connection therewith to the maximum extent permitted by applicable law. In the event that both Employee and the Company are made a party to the same third-party action, complaint, suit or proceeding, the Company agrees to engage competent legal representation, and Employee agrees to use the same representation, provided that if counsel selected by the Company shall have a conflict of interest preventing such counsel from representing Employee, Employee may engage separate counsel of his choosing and the Company shall pay all reasonable attorneys' fees of such separate counsel. To the maximum extent permitted by law, Employee shall not be entitled to indemnification or expense advances under this Agreement in any case where he has exhibited gross negligence or willful misconduct, or performed criminal or fraudulent acts, or engaged in violations of federal securities laws; and the Company may withhold expense advances if it reasonably determines that Employee is not entitled to indemnification hereunder because of gross negligence, willful misconduct, the performance of criminal or fraudulent acts or the violation of federal securities laws.

12. Parachute Payments. If any payment or benefit (any "Payment") Employee would receive from the Company pursuant to or in connection with a "Change in Control" as defined in the Treasury Regulations promulgated under Code §280G would (i) constitute a "parachute payment" within the meaning of Code §280G, and (ii) but for this sentence, be subject to the excise tax imposed by Code §4999 (the "Excise Tax"), then such Payment shall be adjusted to equal the Reduced Amount. The "Reduced Amount" shall be either (x) the largest portion of the Payment (prior to adjustment) that would result in no portion of the Payment being subject to the Excise Tax or (y) the largest portion of the Payment (prior to adjustment), which, after taking into account all applicable federal, state and local employment taxes, income taxes and the Excise Tax (all computed at the highest applicable marginal rate), results in Employee's receipt, on an after-tax basis, of the greater amount of the Payment (than that calculated under clause (x) above) notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in payments or benefits constituting "parachute payments" is necessary so that the Payment equals the Reduced Amount, reduction shall occur in the following order unless Employee elects, in writing, a different order (provided, however, that such election shall be subject to the Company's approval if made on or after the effective date of the event that triggers the Payment): reduction of cash payments; cancellation of accelerated vesting of stock options, if any; and reduction of employee benefits. In the event that acceleration of vesting of the stock options is to be reduced, such acceleration of vesting shall be cancelled in the reverse order of the date of grant of Employee's stock options (i.e., the earliest granted stock option will be cancelled last) unless Employee elects, in writing, a different order for cancellation.

13. No Conflicting Agreements. Employee represents and warrants to the Company that the execution of this Agreement by Employee and Employee's employment by the Company, and the performance of Employee's duties hereunder, will not violate or breach any agreement with any former or existing employer, client, or any other person, firm or entity, to which agreement Employee is a party or by which agreement Employee is bound. Except as disclosed to the Board, Employee also represents and warrants that he is not affiliated in any manner (whether as a member, partner, manager, director, officer, employee or otherwise) with any person or non-affiliate entity that has any business relationship with the Company. Furthermore, Employee agrees to indemnify the Company from and against any and all losses, liabilities, damages and claims, including but not limited to reasonable attorneys' fees and costs and expenses of investigation, arising from any third-party claim made against the Company and based upon or arising out of any non-competition or confidentiality agreement between or among Employee and any such third party.

14. Assignment; Binding Effect. Employee understands that the Company is employing him on the basis of his personal qualifications, experience and skills. Therefore, Employee agrees that he cannot delegate any portion of his obligations of performance under this Agreement. To the extent the Company provides staffing to assist Employee in carrying out his job responsibilities; the failure of such staff, or the failure to provide staff, cannot serve as a reason for inadequate job performance by Employee. Employee may also not assign any of his rights under this Agreement without the prior written consent of the Company, which consent may be conditioned or withheld in the sole and complete discretion of the Company. Subject to the preceding two sentences, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective heirs, legal representatives, and permitted successors and assigns.

15. Complete Agreement. This Agreement is not a promise of future employment. Except as specifically provided herein, Employee has received no oral representations, and has no other understandings or agreements with the Company (oral or written) or any of its officers, directors or representatives covering the same subject matter as this Agreement. This written Agreement, together with its exhibits and schedules, is the final, complete and exclusive statement and expression of the agreement between the Company and Employee pertaining to Employee's employment. This written Agreement may not be later modified except in a writing signed by a duly authorized officer of the Company and Employee, and no term of this Agreement may be waived except by a writing signed by the party waiving the benefit of such term. This Agreement hereby supersedes any other employment agreements or understandings, written or oral, between the Company and Employee.

16. Notices. Whenever any notice is required hereunder, it shall be given in writing addressed as follows:

If to the Company: 220 South Sixth Street, Suite 1200
Minneapolis, MN 55402 Attention: General Counsel

If to Employee: Jon Sabes

Notice shall be deemed to be delivered four days after it is mailed by registered or certified mail, postage prepaid, return receipt requested or one day after it is sent by a reputable overnight courier service. Either party may change the address for notice by notifying the other party of such change in accordance with this Section.

17. Severability; Blue Pencil Doctrine. In the event that any one or more of the provisions of this Agreement or any application thereof, shall be found to be invalid, illegal or otherwise unenforceable, the validity, legality and enforceability of the remaining provisions and any application thereof, shall not in any way be affected or impaired thereby. To the extent any provision of this Agreement is determined by an arbitrator or court of competent jurisdiction to be unenforceable, the arbitrator or court of competent jurisdiction shall reform any such provision to make it enforceable. The provisions of this Agreement shall, where possible, be interpreted so as to sustain their legality and enforceability.

18. Dispute Resolution.

18.1 To the greatest extent possible, the parties will endeavor to resolve any disputes relating to the Agreement through amicable negotiations. Failing an amicable settlement, any controversy, claim or dispute arising under or relating to this Agreement, including the existence, validity, interpretation, performance, termination or breach of this Agreement, will finally be settled by binding arbitration before a three person arbitration panel (the "Arbitration Tribunal") which will be jointly appointed by the parties. The Arbitration Tribunal shall self-administer the arbitration proceedings utilizing the Commercial Rules of the American Arbitration Association ("AAA"); provided, however, the AAA shall not be involved in administration of the arbitration. The Arbitration Tribunal must consist of one retired judge of a state or federal court of the United States or a licensed lawyer with at least 15 years of corporate or commercial law experience.

18.2 The arbitration will be held in Minneapolis, Minnesota. Each party will have discovery rights as provided by the Federal Rules of Civil Procedure within the limits imposed by the arbitrators. It is the intent of the parties that any arbitration will be concluded as quickly as reasonably practicable. Once commenced, the hearing on the disputed matters will be held four days a week until concluded, with each hearing date to begin at 9:00 a.m. and to conclude at 5:00 p.m. The arbitrators will use all reasonable efforts to issue the final written report containing the award or awards within a period of five (5) business days after closure of the proceedings. Failure of the arbitrators to meet the time limits of this Section will not be a basis for challenging the award. The Arbitration Tribunal will not have the authority to award punitive damages to either party. Each party will bear its own expenses, but the parties will share equally the expenses of the Arbitration Tribunal. The Arbitration Tribunal shall award attorneys' fees and other related costs payable by the losing party to the successful party as it deems equitable. This Agreement will be enforceable, however the Employee may appeal any arbitration award in any court of competent jurisdiction. Notwithstanding the foregoing, claims for injunctive relief for breaches of Sections 4, 5, 6, 9 and 10, and claims to enforce arbitration awards, may be brought in a state or federal court in the State of Minnesota.

19. Equitable Relief. Employee acknowledges and agrees that it would be difficult to fully compensate the Company for damages resulting from the breach or threatened breach of the covenants contained in Sections 4, 5, 6, 9 and 10 of this Agreement, and that any such breach may cause the Company irreparable harm. Accordingly, the Company will be entitled to seek injunctive relief, including but not limited to temporary restraining orders, preliminary injunctions and permanent injunctions, to enforce the terms thereof, without the need to demonstrate irreparable harm or, to the extent permitted by applicable law, the need to post any bond. This right to injunctive relief will not, however, diminish any of the Company's other legal rights under this Agreement or at law.

20. Governing Law; Jurisdiction and Venue. This Agreement shall in all respects be construed according to the laws of the State of Minnesota, notwithstanding the conflicts-of-law provisions of such state. Subject to the provisions of Section 18 above, any claims for injunctive relief arising under this Agreement, and any claims to enforce an earlier issued arbitration award, shall be exclusively decided by a state or federal court in the State of Minnesota. Employee hereby irrevocably waives his right, if any, to have any disputes between him and the Company arising out of or related to this Agreement decided in any jurisdiction or venue other than a state or federal court in the State of Minnesota. Furthermore, Employee hereby irrevocably (a) waives any objection that he might have now or hereafter to the foregoing jurisdiction and venue of any such proceeding, (b) submits to the exclusive jurisdiction of any such court set forth above in any such proceeding, and (c) waives any claim or defense of inconvenient forum.

21. Further Assurances. Each party shall, without further consideration, execute such additional documents as may be reasonably required in order to carry out the purposes and intents of this Agreement.

22. Interpretation. Employee has had a meaningful opportunity to work with legal counsel of his choosing and has either availed himself of such opportunity to his satisfaction or has independently determined not to seek such counsel. Furthermore, Employee has a meaningful opportunity to review and negotiate the terms and conditions of this Agreement. Since both parties have participated in the negotiation, drafting and finalization of their business relationship and documented such relationship in this Agreement, this Agreement will not be interpreted as though it has been drafted solely by the Company.

23. Waivers. No term or condition of this Agreement will be deemed to have been waived nor shall there be any estoppel to enforce any provision hereof, except by a written instrument executed by the party charged with waiver or estoppel. A party's delay, waiver or failure to enforce any of the terms of this Agreement or any similar agreement in one instance shall not constitute a waiver of its rights hereunder with respect to other violations of this or any other agreement.

24. Counterparts and Delivery. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. Counterpart signatures delivered by facsimile or other means of electronic transmission shall be valid and binding to the same as the delivery of original ink signatures.

IN WITNESS WHEREOF, the parties have executed this Employment Agreement as of the date first above written.

COMPANY:

FOXO BIOSCIENCE LLC

By: /s/ Laurence Zipkin

Name: Laurence Zipkin

Title: Director

EMPLOYEE:

JON SABES

/s/ Jon Sabes

Name: Jon Sabes

Signature Page —

Exhibit A

Titles: Chief Executive Officer of the Company (“CEO”)
Chairman of the Board of Directors of FOXO BioScience LLC (“Chairman”)

Summary: The business of the Company is highly reliant on the founder (Jon Sabes/Employee) for his entrepreneurial vision of the business and the execution of its business plan. As a result, Employee provides a unique and valuable role as the Company’s Chief Executive Officer and Chairman.

Description: **Chief Executive Officer:** The duties of the Chief Executive Officer will be to generally oversee and direct the strategy and activities of the Business of the Company for developing and implementing Company’s strategic plan; ensuring reporting on Company performance metrics, including compliance with operating budgets and annual business plans; and being informed of and meeting all legal and fiduciary responsibilities; or as otherwise directed by the Board.

Chairman: The duties of the Chairman will be to preside over the Board of Directors of FOXO BioScience LLC. In this role, the Chairman will be responsible for planning, presiding over, and facilitating Board and committee meetings; Board resolutions are carried out; and providing governance leadership.

Compensation

Base: \$480,000 annually

Incentive:

- *Cash Bonus Compensation*
 - o The annual Cash Bonus Compensation of up to 50% of CEO’s Base Salary.
 - o CEO shall be reviewed by the Compensation Committee of the Board on a semi-annual basis, which shall determine CEO’s Cash Bonus Compensation.
- *Profits Interest Equity Incentive Compensation:*
 - o 10% Profits Interest as participation in the Company’s Equity Incentive Compensation Plan.
 - o Additional Profits Interest Terms:
 - The Committee, in its sole discretion, may annually vest some, or all of the available Profits Interests based upon the achievement of one or more of the strategic and/or operational goals.
 - Daily vesting over a three-year period, provided all Profits Interests shall become fully vested immediately prior to a Change in Control or termination of employment by Company.
 - Purchase Price \$0
 - Hurdle Distribution Rate \$0
 - Cashless exercise.

Life Insurance: Individual life insurance coverage of \$20,000,000, with beneficiaries to be the Company and CEO’s spouse 50/50.



September 3, 2020

Tyler Danielson

RE: OFFER OF EMPLOYMENT

Dear Tyler:

The FOXO team (collectively, “Company,” “our,” “we” or “us”) is pleased to offer you the role and position as our **Chief Technology Officer**.

We are very excited to make you this offer and to have you join our team!

Your Role:

As the Chief Technology Officer of the Company, you will work closely with the entire team to create the most innovative, modern and exciting - technology enabled - life insurance company ever conceived.

Our Company is dedicated to modernizing the longevity insurance industry with molecular biotechnology for both underwriting and consumer engagement. As such, FOXO is the most forward thinking life insurance company to use and deploy modern technology that promises to change an industry. As the Chief Technology Officer, your role sits at the core of how FOXO will use and deploy technology in redefining an industry.

Your professional and personal experience has prepared you for this role unlike any other candidate. In your role, you will work directly with the Chief Executive Officer, to ensure his bold entrepreneurial vision of an industry redefined plays out masterfully in its execution. Accordingly, you will lead a cross functional team charged with the task of bringing FOXO.Life into reality by Q2-2020. In order to achieve this goal, FOXO.Life will use a combination of systems that provide efficiencies that allow our reimagined life insurance product shine. Our reimagined life insurance product combines the old with the new - creating something entirely different.

Our hypothesis is that a traditional life insurance policy (the “old”) is combined with a molecular health and wellness platform (the “new”), we transform the product into a health and wellness product. We have tested this hypothesis directly with consumers and with insurance agents. And we are confident that executed properly, we can create a value proposition that will stand out and attract a significant following among younger, tech savvy, highly educated, higher income earning individuals - and the agents who strive to serve them.

FOXO Bioscience | 220 South Sixth Street, Suite 1200 | Minneapolis, MN 55402



We are deeply passionate that the primary benefit of our FOXO life insurance product is helping its customers live healthier lives. And we believe healthier lives begin with molecular health and wellness - the foundation of all life on earth. Scientists have only recently gained access to the tools and technology necessary to unbundle the foundational relationships of our biology. The human genome, that took a decade to sequence at a cost of \$3B in 2003 can be sequenced in a few hours for a few hundred dollars. Thus, in less than seventeen years, science and technology has fundamentally changed our understanding of our human biology. And as our Chief Technology Officer, you can appreciate how technology will continue to accelerate and play a growing role in our lives. Your role is to lead the FOXO team to harness technology in order to achieve our strategic goals and objectives with maximum efficiency.

Your Position:

The key accountabilities and duties of the Chief Technology Officer position include, but are not limited, to the following:

- Leading a cross-functional internal team, along with third party vendors, in the technology implementation necessary to successfully launch and operate our FOXO.Life.
- Lead the development of our digital platform that allows consumers to seamlessly purchase our products, as well as allow for customers servicing, claims management, and health and wellness engagement.
- Set and implement the company's technology vision and plan, ensuring resources (internal and third-party) meet the company's short and long-term needs with functionality and efficiency.
- Work with executive leadership to make decisions on behalf of the Company's technological requirements that align to the business goals.
- You are expected to act as both a technology and business expert, making decisions that will impact the current and future operations of the Company.
- Develop and implement policies and systems to ensure company's systems and data are secure. This includes being a primary participant towards obtaining and maintaining SOC2 certification.
- Work with General Counsel to ensure the Company's data policies and systems comply with appropriate regulatory frameworks.

The key consideration of the terms of our offer of employment are in Exhibit A. If these terms of employment are acceptable, please indicate your acceptance below.

Sincerely,

Jon Sabes
Chief Executive Officer

FOXO Bioscience | 220 South Sixth Street, Suite 1200 | Minneapolis, MN 55402



I hereby accept the role and position as Chief Technology Officer of FOXO, the terms of my employment are set forth on Exhibit A.

ACCEPTED:

/s/ Tyler Danielson

Tyler Danielson

Date: 9/5/2020

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Exhibit A

POSITION: Chief Technology Officer

REPORT: You will report to Jon Sabes and [his/her] designees as directed.

START DATE: October 5, 2020

LOCATION: Initially, during the COVID-19 pandemic, you will work remotely from your residence. In the future, as the pandemic subsides, we may request you to work at our offices in Minneapolis and/or Austin, TX. If your position within the Company requires you to relocate, the Company would cover your relocation expenses.

COMPENSATION: *Base Salary* – \$195,000 per annum.

Your base salary will be (gross), less applicable income tax and other legally required withholding and any deductions that you authorize. Salaries are paid biweekly directly into a nominated bank account.

Signing Bonus – Sprinter Van

You will design and configure FOXO#2 Sprinter Van for your use as long as you are an employee of FOXO. The FOXO#2 Sprinter Van configuration will be approved by the CEO and paid for by the Company. At your discretion you can set the time for it to be booked, however, when the FOXO#2 Sprinter Van is not in use, it will be available for other Company team members to use. Other than insurance, all operating costs and damage shall be that of the user, unless FOXO#2 is used for corporate business. Standard maintenance costs of FOXO#2 shall be paid by the Company.

Incentive Compensation – You will be eligible to participate in our incentive compensation plan that will provide you with an annual incentive compensation in the form of cash and stock options based upon your performance and the company's achievement of certain milestones. We expect this incentive compensation award to be paid annually and equate to up to 20% of your annual Base Salary. Incentive compensation will be discretionary by the Company.

Equity Based Incentive Compensation – The Company plans to adopt a new equity-based stock option incentive compensation program by no

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later than Q3-2020. At the time of the new plan's adoption, you will be awarded stock option equity-based incentive compensation. The initial value of the stock option you receive will be 1X your Base Salary. In addition, you will receive additional stock option awards as part of the Company's equity based incentive compensation awards. The first additional award shall be made on June 30, 2021, with additional awards every six months thereafter. The amount of incentive compensation awards are at the discretion of the Company.

EXPENSES: We will reimburse you for all appropriate and reasonable business expenses you have incurred in performing your duties.

TERM: The term of your employment is at-will.

BENEFITS: As a regular full-time employee, you will be eligible to participate in the following sponsored benefits, subject to the terms and conditions of each benefit plan or program:

- **401k Plan** – *(available soon)*
- **Medical, Dental and Vision** – *(For you and your eligible dependents.)*
- **Life and AD&D Insurance** – *(Paid for by us in an amount of 1x your Annual Salary to a maximum of \$50,000.)*
- **Short-Term and Long-Term Disability Insurance** – *(Paid by us.)*
- **Paid Time Off (PTO)** – *(You will receive a total of twenty-five (25) days per year, comprised of Vacation and Sick Days.)*
- **Holidays** – *(You are entitled to seven (7) paid holidays.)*
- **Other Voluntary Benefits** – Some of the benefits are governed by insurance contracts and benefits summaries, and the terms and conditions in those materials' control. Others are based on our established policies and procedures. Like other employers, we review our benefits regularly and reserve the right to add new benefits, modify existing programs, and terminate them, as we deem necessary. All terms and conditions of employment are subject to modification from time to time as we deem necessary or appropriate.

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ROBERT POTASHNICK EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the “Agreement”) is made and entered into on this 29th day of December 2020, by and between FOXO Technologies, Inc., a Delaware corporation (the Company”) and Robert Potashnick (the “Executive”).

RECITALS

WHEREAS, the Company desires to enter into this Agreement with the Executive for his full-time employment to serve as its Chief Financial Officer; and

WHEREAS, the Executive desires to serve as the Chief Financial Officer of the Company and enter into this Agreement with the Company.

NOW, THEREFORE, in consideration of the recitals above and the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the Company and Executive (collectively the “Parties” and each a “Party”) agree as follows:

1. Title, Duties and Term of Employment:

(a) Executive will serve as the Chief Financial Officer of the Company and report to the Company’s Chief Executive Officer and Board of Directors. Executive understands and agrees that the Company is a rapidly growing organization and the precise nature of the work of the Chief Financial Officer asked to be completed on behalf of the Company may be adjusted from time to time but, in any event, the duties and responsibilities will include those duties and responsibilities normally associated with and appropriate for someone in the position of Chief Financial Officer, which shall include, but not be limited to preparing and maintaining the Company’s financial reporting to the SEC in compliance with GAAP and all regulatory requirements, providing day-to-day effective oversight of all operational and regulatory matters, ensuring operational integrity and best practices; helping the Company to achieve and exceed strategic and operating goals; presenting and maintaining investor relationships in support of the strategies and objectives of the Company; advising the Board of Directors (“Board”) and the Chief Executive Officer concerning Company performance, strategy, operations, initiatives and developments in the industry; working with outside accounting, audit, tax, SOX, legal counsel, advisors, and other vendors appropriate; and travel as needed and requested by the Company.

(b) Executive shall perform his duties and responsibilities to the best of his professional skill and ability. In all such matters, Executive will act in good faith, in the best interests of the Company.

(c) Executive’s employment under this Agreement shall commence on or before January 14, 2021 (the “Commencement Date”). Executive’s employment shall continue until such time either party terminates this agreement pursuant to paragraph 3 of this Agreement. The period during which Executive’s employment continues in effect pursuant to this Agreement is hereinafter referred to as the Employment Period.

2. **Compensation:** During the Employment Period, Executive shall be compensated as follows:

(a) Base Salary: As used in this Agreement, the term “Base Salary” refers to the annual amount of Executive’s salary, and does not include any other amounts. For example, Base Salary does not include option or incentive compensation or bonus awards. For the services to be rendered by Executive, the Company agrees to pay Executive a Base Salary of \$180,000 per year, subject to all payroll deductions as required by law. Executive’s Base Salary shall be reviewed annually throughout the Employment Period.

(b) Standard Incentive Compensation: The Executive shall participate in the Company’s discretionary Standard Incentive Compensation Plan. The Standard Incentive Compensation Plan is subject to review and change by the approval of the Board of Directors. Currently, the Company’s Standard Incentive Compensation Plan provides all employees with the opportunity to receive an annual bonus of up to 20% of an individual’s base salary, paid semi- annually pursuant to management performance reviews. The Company may pay the Standard Incentive Compensation bonus compensation in the form of cash or stock options.

(c) Executive Incentive Compensation: The Compensation Committee of the Board of Directors shall work with the Executive to develop an Executive Incentive Compensation plan that creates benchmark goals and objectives for key executives and provides additional bonus compensation opportunities key executives to receive additional annual bonus of up to 20% of an individual’s Base Salary upon achievement of specified goals and objectives of the Company. In the absence of the development of such Executive Incentive Compensation plan, the Executive shall be eligible for an additional annual bonus of up to 20% of the Executive’s Base Salary based on meeting the objectives in the Standard Incentive Compensation Plan.

(d) Signing Bonus & Initial Option Grant: Within thirty days of the Commencement Date, the Company shall compensate the Executive with (i) a cash compensation signing bonus of \$30,000; and (ii) an initial grant of incentive stock options valued in an amount of \$360,000 of the Company’s common stock, with a strike price of approximately \$3.60 per share (subject to final adjustment per the Company’s Certificate of Incorporation) and shall vest in accordance with the Company’s 2020 Equity Incentive Compensation Plan and Incentive Stock Option Agreement (copies of which have been provided to the Executive).

(e) Benefit Plans and Programs: Beginning on the Commencement Date, Executive shall be entitled to participate in all employee benefit plans and programs made available by the Company to the Company’s executive employees generally, including, without limitation: health insurance, dental insurance, life insurance, disability insurance, 401k plan and health spending account (HSA) plan. During the Employment Period, the Company shall the same portion of the costs of such benefits and programs as other senior executive employees for Executive. In the event that the provision of, or payment for, such benefits is prohibited or otherwise adversely impacted by the Patient Protection and Affordable Care Act or other similar laws, the Parties shall negotiate in good faith to determine an equitable benefit in lieu thereof.

(f) Vacation and Personal Days: Executive shall receive paid vacation during the Employment Period of no less than 20 days per calendar year.

(g) Reimbursement: Executive is authorized to incur reasonable expenses in carrying out the Executive’s duties for the Company under this Agreement and shall be entitled to reimbursement for all reasonable business expenses, including but not limited to Executive’s monthly cell phone bill, that Executive incurs during the Employment Period. The Company also agrees to reimburse Executive for all reasonable expenses incurred in relation to keeping Executive’s CPA license active, including but not limited to annual dues for the AICPA, MNCPA, and Minnesota Board of Accountancy, and fees for continuing professional education courses.

3. Termination of Employment:

(a) Terms Applicable to Any Type of Termination: In the event of a termination of Executive's employment, the Company shall pay Executive: (A) any unpaid Base Salary on the Company's regular payday, prorated to the effective date of termination; and (B) the dollar value of all accrued and unused vacation benefits based upon Executive's Base Salary. The Company shall also reimburse Executive in accordance with and subject to the requirements of the Company's expense reimbursement practices for any reasonable and necessary business expenses incurred by Executive on behalf of the Company on or before the date on which his employment terminates, and reported and properly documented on expense reports.

(b) Termination Without Cause: The Company shall have the right to terminate Executive's employment without cause during the Employment Period upon notice to Executive. In the event of a Termination Without Cause, the Company will pay Executive severance compensation in an amount equal to an amount of one half of Executive's Base Salary in effect on the date on which Executive's employment is terminated, payable in a lump sum within thirty (30) days after the date of the termination. If Executive is eligible for and elects to continue group health coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"). The Company will also pay Executive a bonus under the Incentive Compensation Plan prorated based upon the number of days for which Executive was employed during the period for which such payments are made (e.g., quarter), and any Options or other equity incentives which have been granted to Executive shall fully vest on the date of termination.

(c) Termination For Cause: The Company shall have the right immediately to terminate Executive's employment for cause during the Employment Period upon notice to Executive.

(i) Termination For Cause shall mean:

(A) A breach by Executive of any term of this Agreement or of Executive's fiduciary duties to the Company, which breach remains uncured more than thirty (30) days after Executive receives written notice from Company specifying such breach;

(B) The material failure of Executive to perform Executive's duties or responsibilities as Chief Financial Officer which remains uncured more than thirty (30) days after Executive receives written notice from Company specifying such failure ("Failure Notice");

(C) Executive's violation of any law, statute or regulation relating to the operation of the Company's business; or

(D) The commission of, or conviction for (or its procedural equivalent), or the entering of a guilty plea or plea of no contest with respect to, a crime or any conduct of Executive which involves moral turpitude.

(ii) If Executive's employment is Terminated For Cause, except as set forth in subparagraph 3(a), the Company shall have no obligation to make payments of any kind to Executive.

(d) Resignation for Good Reason: Executive shall have the right to resign from employment with the Company for Good Reason during the Employment Period upon notice to the Company.

(i) As used in this Agreement, the term “Good Reason” means (a) a breach of this Agreement by the Company which breach, where curable, has not been cured within thirty (30) days after written notice to the Company setting forth the particulars of such alleged breach; (b) a reduction in Executive’s Base Salary; (c) assignment to Executive of duties inconsistent with the Executive’s position, or a diminution in Executive’s authority, responsibility, status, title, or offices; (d) relocation of Executive’s primary office to a location more than thirty (30) miles away from Executive’s primary office location as of the Commencement Date; (f) a Change in Control; and (j) the failure of the Company to comply fully with its obligations under subparagraph 9(d) of this Agreement. The Executive shall not be able to resign for Good Reason once the Executive has been provided a Failure Notice under Section 3(c)(i)(B) until such time the Company has agreed in writing that such failure has been cured (a “Remedied Notice”).

(ii) In the event of a Resignation for Good Reason, Executive shall be entitled to all payments and other benefits provided under subparagraphs 3(a) and 3(b) above.

(e) Voluntary Resignation: Executive may voluntarily resign Executive’s employment under this Agreement without Good Reason at any time; however Executive agrees to provide at least thirty (30) days advance written notice to the Company.

(f) Death: If Executive’s employment ends through Executive’s death, Executive shall be entitled to all payments and other benefits provided under subparagraph 3(a) above. The Company will also pay Executive’s estate a bonus under the any incentive compensation plans prorated based upon the number of days for which Executive was employed during the period for which such payments are made (e.g., quarter).

4. Confidential Information:

(a) Confidential Information: As used in this Agreement, the term “Confidential Information” means information in whatever form, pertaining to the business of the Company that is not generally known outside of the Company, or that is known outside of the Company through improper means. Without limiting the foregoing definition, Confidential Information includes, but is not limited to: (i) technical information, formulas, teaching and development techniques, methodologies, processes, trade secrets, computer programs, electronic codes, designs, product development information, inventions, improvements, and research projects; (ii) information about finances, costs, profits, markets, proposals, sales, and lists of customers or clients; (iii) business, marketing, and strategic plans; and (iv) employee personnel files and compensation information.

(b) Non-Disclosure of Confidential Information: During the Employment Period, Executive agrees to hold all Confidential Information in strict confidence and trust for the sole benefit of the Company and Executive agrees that Executive will not disclose any Confidential Information, directly or indirectly, to anyone outside of the Company, and Executive will not use, copy, publish, summarize, or remove from Company premises Confidential Information except to the extent necessary to carry out Executive’s responsibilities as an employee of the Company. After Executive’s employment with the Company ends, Executive will not, directly or indirectly, use or disclose any Confidential Information to any person or entity, except as authorized in advance by an officer of the Company in writing. The restrictions in this subparagraph, however, will not apply to Confidential Information that is or has become known to the public generally through no fault of or breach by Executive, or was previously known to Executive other than as a result of employment with the Company.

5. Non-Solicitation Covenants:

(a) Non-Solicitation of Employees: Executive agrees that, during the Employment Period, and for a period of twelve (12) months following the termination of Executive's employment, regardless of the reason for such termination, Executive will not, directly or indirectly, solicit, or attempt to solicit, for employment, with Executive or with any other person or entity, any employee of the Company.

(b) Non-Solicitation of Customers or Financing Relationships: Executive agrees that, during the Employment Period, and for a period of twelve (12) months following the termination of Executive's employment, regardless of the reason for such termination, Executive will not, directly or indirectly, solicit any business for Executive, or for any other person or entity, from any client or financing relationship of the Company with which Executive had contact within the twelve (12) months prior to the termination of Executive's employment with the Company or concerning which Executive had access to Confidential Information, during and by virtue of Executive's employment with the Company.

6. Resolution of Disputes:

The Parties agree submit any disputes between them to final and binding arbitration pursuant to the then-current AAA national rules for the resolution of employment disputes before a neutral arbitrator selected from the list of Arbitrators. THE PARTIES EXPRESSLY AGREE THAT SUCH ARBITRATION SHALL BE THE EXCLUSIVE REMEDY FOR ANY DISPUTE INVOLVING THIS AGREEMENT, THE EXECUTIVE'S EMPLOYMENT, TERMINATION, COMPENSATION, OR BENEFITS AND HEREBY EXPRESSLY WAIVE ANY RIGHT THEY HAVE, OR MAY HAVE, TO A COURT TRIAL OR A JURY TRIAL OF ANY SUCH DISPUTE.

In making an award, the arbitrator shall have no power to add to, delete from or modify this Agreement, or to enforce purported unwritten or prior agreements, or to construe implied terms or covenants into the Agreement. In reaching a decision, the arbitrator shall adhere to the relevant law and applicable precedent, and shall have no power to vary therefrom. In construing this Agreement, its language shall be given a fair and reasonable construction in accordance with the intention of the parties and without regard to which party drafted it. At the time of issuing a decision, the arbitrator shall (in the decision or separately) make specific findings of fact, and shall set forth such facts as support the decision, as well as conclusions of law, and the reasons and bases for the opinion. In the event the arbitrator exceeds the powers or jurisdiction here conferred, or fails to issue a decision in conformance herewith, it is specifically agreed that the aggrieved party may petition a court of competent jurisdiction to correct or vacate such award, and that the arbitrator's act of exceeding his or her powers shall be grounds for granting such relief. If any one or more provisions of this arbitration clause shall for any reason be held invalid or unenforceable, it is the specific intent of the parties that such provisions shall be modified to the minimum extent necessary to make it or its application valid and enforceable.

7. Jurisdiction and Venue:

To the extent that either party is permitted to file any action in court that involves any aspect of this Agreement, or arises out of, or is related to or connected with Executive's employment, compensation or benefits, or the termination thereof, the parties agree that such action must be brought in either federal court in Minnesota, or in state courts of the Fourth Judicial District (Hennepin County), and the parties irrevocably consent to jurisdiction and venue in such courts.

8. Attorneys' Fees:

Should any arbitration or litigation commence between the parties concerning this Agreement or the rights and obligations of either party, whether it be an action for damages, equitable or declaratory relief, if the party commencing legal action is the prevailing party in any arbitration or litigation, said party shall be entitled to recovery from the other party, as an element of its costs, in addition to other relief as may be granted by the arbitrator or court, reasonable sums as and for attorneys' fees incurred in such arbitration or litigation.

9. Miscellaneous Provisions:

(a) All payments required to be made by the Company to Executive (or his heirs, executors, administrators, or estate) shall be subject to the withholding of such amounts, if any, relating to federal, state and local taxes and other payroll deductions as the Company may reasonably determine it should withhold pursuant to any applicable law, regulation or order.

(b) The Company's or Executive's refraining from exercising any right under this Agreement for a reasonable period of time when it is permissible for the Company or Executive to exercise such right shall not constitute a waiver by either of them of any such right, unless so provided in a writing signed by both Parties and shall not prevent the Company or Executive from exercising any such right at any time.

(c) Executive agrees to keep the financial terms of this Agreement confidential; provided, however, that Executive may disclose the financial terms of this Agreement to his attorney, accountant, financial advisor and spouse, and to government agencies for the purpose of payment or collection of taxes or application for unemployment compensation benefits. Executive may also disclose the financial terms of this Agreement if required to do so by lawful subpoena, in any proceeding to enforce the terms of this Agreement, or in any mediation or arbitration under the terms of this Agreement. Executive may also disclose the existence and terms of the covenants in paragraphs 4 and 5 of this Agreement to any prospective or subsequent employer.

(d) If any claim is asserted or any litigation is threatened or pursued against Executive by a previous employer or an affiliate of a previous employer related to Executive's previous employment, the Company shall either: (i) defend and indemnify Executive, and hold Executive harmless, against and in respect of any and all such demands, judgments, costs, and expenses (including reasonable attorneys' fees), losses, and damages arising from such claim or litigation; or (ii) terminate Executive's employment Without Cause as provided under subparagraph 3(b) of this Agreement.

(e) Notwithstanding anything in this Agreement to the contrary, all payments to be made upon a termination of employment under this Agreement shall only be made upon a "separation from service" within the meaning of Section 409A of the Internal Revenue Code (the "Code"). To the maximum extent permitted under Section 409A of the Code and its corresponding regulations, the cash severance benefits payable under this Agreement are intended to meet the requirements of the short-term deferral exemption under Section 409A of the Code and the "separation pay exception" under Treas. Reg. § 1.409A-1(b)(9)(iii). For purposes of the application of Treas. Reg. § 1.409A-1(b)(4)(or any successor provision), each payment in a series of payments to the Executive will be deemed a separate payment. With respect to any expense, reimbursement or in-kind benefit provided pursuant to this Agreement that constitutes a "deferral of compensation" within the meaning of Section 409A of the Code and its implementing regulations and guidance, (i) the expenses eligible for reimbursement or in-kind benefits provided to the Executive must be incurred during the Employment Period (or applicable survival period), (ii) the amount of expenses eligible for reimbursement or in-kind benefits provided to the Executive during any calendar year will not affect the amount of expenses eligible for reimbursement or in-kind benefits provided to the Executive in any other calendar year, (iii) the reimbursements for expenses for which the Executive is entitled to be reimbursed shall be made on or before the last day of the calendar year following the calendar year in which the applicable expense is incurred, and (iv) the right to payment or reimbursement or in-kind benefits hereunder may not be liquidated or exchanged for any other benefit.

(f) All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered personally or sent by Federal Express or UPS next-day delivery, or by certified express mail, return receipt requested, postage prepaid, to the parties to this Agreement as the following addresses or to such other address as either party may specify by notice to the other:

If to the Company:

Chief Executive Officer
FOXO Technologies, Inc.
220 S 6th St #1200
Minneapolis, MN 55415

If to the Executive:

Robert Potashnick

10. Prior Obligations and Information of Others:

(a) Prior Obligations: Executive represents and warrants that he is free to enter into this Agreement and accept employment with the Company upon the terms and conditions set forth in this Agreement, and that the terms and conditions in this Agreement will not cause Executive to violate any obligation that Executive owes to any prior employer.

(b) Information of Others: During Executive's employment with the Company, Executive will not disclose to the Company, or use, or induce the Company to use, any confidential or proprietary information of any prior employer in violation of any obligation that Executive owes to such prior employer.

11. **Effective Date:** Each of the Parties is signing this Agreement with the intent to be legally bound by it. This Agreement shall become effective upon the date on which Executive executes a copy of this Agreement that has already been signed by the Chief Executive Officer on behalf of the Company, and delivers the executed Agreement to the Company.
 12. **Construction:** Except as may be expressly provided herein, the validity, interpretation, construction, performance and enforceability of this Agreement shall be governed in all respects by the laws of the State of Minnesota, without application of its conflict of laws principles.
 13. **Successors and Assigns:** This Agreement shall be binding upon the parties' heirs, successors and assigns. The obligations and covenants of the Executive under this Agreement, being personal, may not be delegated or assigned.
 14. **Severability:** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction or by an arbitrator, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
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15. **Entire Agreement:** This Agreement is the entire agreement between the parties concerning the terms of Executive's employment and supersedes any and all prior agreements or understandings between them concerning its subject matter, oral or written. This Agreement may be not changed or terminated orally, and no change, termination or attempted waiver of any of the provisions hereof shall be binding unless in writing signed by Executive and the President.
16. **No Waiver:** The waiver by either party of any term, condition or provision of this Agreement shall not be construed as a waiver of any other or subsequent term, condition or provision of this Agreement.
17. **Voluntary Agreement:** Executive and the Company represent and agree that each has reviewed all aspects of this Agreement, each has carefully read and fully understands all provisions of this Agreement, each has had opportunity to review any and all aspects of this Agreement with the legal, tax, or other advisors of such party's choice, and each is voluntarily entering into this Agreement.
18. **Photocopies:** Photocopies of this signed Agreement are as binding and as legally enforceable as a signed original.

For FOXO Technologies, Inc.

By: /s/ Jon Saves

Jon Sabes

12/29/2020

Date

By: /s/ Robby Potashnick
Robby Potashnick

12/29/2020
Date

AMENDED & RESTATED EMPLOYMENT AGREEMENT

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this “Agreement”) is by and between GWG Holdings, Inc., a Delaware corporation (together with its subsidiaries including Life Epigenetics Inc. (“LEGX”), the “Company”), and Brian Chen (“Employee”), and entered into effective as of August 20, 2017 (the “Effective Date”) and replaces all previous agreements, whether written or oral between the Company and the Employee.

INTRODUCTION

The Company, through its wholly owned subsidiary, LEGX, is a life science technology company committed to finding and applying epigenetic and related science and technology to transforming the life insurance and health and wellness industries (the “Business”). Employee desires to serve the Company in such role and provide the Company with such covenants. Accordingly, the parties wish to enter into this Agreement setting forth their respective rights and obligations.

AMENDED AND RESTATED AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants set forth herein, and for other good and new valuable consideration set forth in Section 3.1 below in the form of the Phantom Equity Rights, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Certain Definitions.

1.1 “Code” means the Internal Revenue Code of 1986, as amended, including and succeeding provisions of law and any regulations promulgated by the United States Treasury Department thereunder.

1.2 “Employment Period” means the employment term as defined under Section 7 this Agreement.

1.3 “Good Cause” means any one or more of the following: (a) the commission by Employee of an act relating to Employee’s duties constituting a misdemeanor or a felony under the laws of the United States or any state or political subdivision thereof or any other jurisdiction; (b) the commission by Employee of an act constituting a breach of fiduciary duty or willful misconduct; (c) conduct by Employee that is detrimental to the Business or the reputation, character or standing of the Company or any of its affiliates; (d) the commission by Employee of an act of fraud, dishonesty or misrepresentation related to Employee’s duties that is detrimental to the Business or the reputation, character or standing of the Company or any of its affiliates; (e) Employee’s engagement in self-dealing, or his involvement in a transaction involving a conflict of interest without the prior written approval of the Board; (f) the failure of the Employee to perform the functions required by the Company at a level satisfactory to the Employee’s direct supervisor; or (g) a breach by Employee of his obligations under this Agreement.

1.4 “Good Reason” means a resignation by Employee of his employment hereunder upon the occurrence of any of the following events taking place without Employee’s prior written approval: (a) a material reduction, either from one year to the next, or within the current year, in the Employee’s base salary or bonus; (b) a failure by the Company to provide adequate resources to develop Technology; (c) decision by the Company to stop developing, contracting, or funding the development of Technology; or (d) a material breach by the Company of any of its obligations contained in this Agreement that to the extent an act or omission giving rise to cause to the material breach is not reasonably susceptible to cure, the Company shall be given a reasonable opportunity, not to exceed thirty (30) days, after written notice by the Employee to the Company to cure such act or omission.

1.5 “Technology” means the commercialization of epigenetic methylation technology in general.

2. Employment and Duties.

2.1 The Company agrees to continue to employ Employee for the Employment Period, and Employee agrees to remain in the employ of the Company for the Employment Period. The term of this Agreement shall continue as described in, and until such time as the employment of Employee is terminated pursuant to, Section 7 below.

2.2 The Company is employing Employee hereunder as for the position of Chief Science Officer described in Exhibit A and is expected to perform and fulfill job functions commonly associated with such positions on behalf of the Company. In this regard, Employee agrees to perform such duties and responsibilities, in good faith and for the exclusive benefit of the Company, as are prescribed for him under this Agreement, the Company’s corporate bylaws, and as otherwise directed by the Employee’s direct supervisory report, or their superior officer within the Company. Without limiting the foregoing, Employee’s duties shall in any event include overseeing the development of Company Technology as set forth in Exhibit A.

2.3 Employee shall reasonably allocate his business time, attention, energies and skills shall to the Company and the Business; provided, however, that Employee shall be entitled to participate in social, civic or professional associations or engage in passive outside investment activities which may require a limited portion of time and effort to manage (consistent at all times with Company’s policies and procedures), so long as such activities do not interfere with the performance of Employee’s duties nor compete, in any way, with the products or services offered by or through Company.

3. Compensation. For services rendered by Employee during the Employment Period, the Company shall provide the Employee with the elements of compensation as set forth in Exhibit A.

3.1 Simultaneous to the execution of this Agreement, shall be execution and delivery of a Phantom Equity Rights Agreement in the form attached hereto as Exhibit B (such incentive, the “Phantom Equity”), the purpose and intent of which is to enable Employee to participate in the economic growth of value of the Business during the Initial Term of this Agreement.

3.2 Employee shall be entitled during the Employment Period to participate in all current human resource benefit programs made available from time to time to other management-level employees of the Company and its subsidiaries.

3.3 Employee and Employee's qualified family members, as the case may be, shall be eligible to participate in, and shall receive all benefits under, the human resource benefit programs made available from time to time to other management-level employees of the Company and its subsidiaries.

3.4 Employee shall be entitled to receive reimbursement for all reasonable expenses incurred by Employee in connection with the Business of the Company in accordance with the applicable policies, practices and procedures of the Company and its affiliates.

4. Inventions.

4.1 Employee agrees that any Invention, as defined below, shall be the sole and exclusive property of the Company, and further agrees to: (a) promptly and fully inform the Company in writing of any such Inventions; (b) assign to the Company all of Employee's rights in and to such Inventions, and to applications for patents and copyright registrations and to patents and copyright registrations granted upon such Inventions in the United States or in any foreign country; and (c) promptly acknowledge and deliver to the Company, without charge to the Company but at the Company's expense, such written instruments and perform such other acts as may be necessary, in the reasonable opinion of the Company, to obtain and maintain patents and copyright registrations and to vest the entire rights, interest in and title thereto in the Company.

4.2 Employee and the Company understand that the provisions of this Agreement requiring assignment of Inventions to the Company will not apply to any particular Invention that meets each and all of the following criteria: (a) Employee develops entirely on his own time, completely outside of Employee's normal working hours; (b) Employee develops related to the work detailed in Exhibit A without using Company equipment, supplies, facilities or trade secret or Confidential Information, as defined below; (c) does not result from any work performed by Employee for the Company; and (d) does not, either at the time of conception or at the time of reduction to practice, directly relate to the Company's Business, as then conducted or planned to be conducted at the time of conception or at the time of reduction to practice. Any such Invention meeting all of the criteria set forth in clauses (a) through (d) above will be owned entirely by Employee, even if developed by Employee during the Employment Period or otherwise during the time period of his employment or association with the Company. Finally, Employee agrees and covenants that he will not individually file any patent applications relating to Inventions without first obtaining an express release from a duly authorized Company representative, except for those related to the work detailed in Exhibit A according to the limitations specified in (b) above.

4.3 For purposes of this Agreement, the term "Inventions" means all discoveries, improvements, inventions, ideas and works of authorship, whether patentable or copyrightable, conceived or made by Employee either solely or jointly with others, and relating to any consultation, work or services performed by Employee with, for on behalf of or in conjunction with the Company or based on or derived from Confidential Information.

5. Confidential Information.

5.1 Employee will hold all Confidential Information, as defined below, in the strictest confidence and never use, disclose or publish any Confidential Information without the prior express written permission obtained from a representative duly authorized by the CEO. Employee agrees to maintain control over any Confidential Information obtained prior to or during the term of this Agreement, and restrict access thereto to the Company's employees, agents or other associated parties who have a need to use such Confidential Information for its intended purpose.

5.2 Promptly upon the Company's written request (but in any event within ten days), all records and any compositions, articles, devices and other items which disclose or embody Confidential Information in Employee's possession, including all copies or specimens thereof, regardless of whether prepared or made by Employee or by others, will be destroyed by Employee and Employee will certify in writing to the Company that he has destroyed all Confidential Information and embodiments thereof as required under this Agreement.

5.3 For purposes of this Agreement, the term "Confidential Information" shall mean all information developed by Employee as a result of his work with, for, on behalf of, or in conjunction with, the Company and any information relating to the Company's processes and services, including information relating to research, know-how, formulae, product or service ideas, inventions, trade secrets, patents, patent applications, systems, products, programs and techniques and any secret, proprietary or confidential information, knowledge or data of the Company, except such information that was developed by Employee prior to his employment by the Company. All information disclosed to Employee or to which Employee obtains access, whether originated by Employee or by others, and which is treated by the Company as "Confidential Information" or which Employee has a reasonable basis to believe is "Confidential Information," will be presumed to be "Confidential Information" for purposes of this Agreement. Notwithstanding the foregoing, the term "Confidential Information" will not apply to information which (i) Employee can establish by documentation was known to Employee prior to its receipt by Employee from the Company, (ii) is lawfully disclosed to Employee by a third party not deriving such information from the Company, (iii) is presently in the public domain or becomes a part of the public domain through no fault of Employee, or (iv) is required to be disclosed pursuant to applicable law, rule, regulation, or court or administrative order; provided, however, that Employee shall take reasonable steps to obtain confidential treatment for such items and shall promptly advise the Company of Employee's notice of any such requirement in order to permit the Company to obtain such confidential treatment on its own behalf.

6. No Solicitation of Customers or Employees; Restrictive Covenant. Employee acknowledges that the Company has invested and will continue to invest substantial time, effort and expense in acquiring and compiling its confidential, proprietary and trade secret information and in assembling its present staff of personnel. In order to protect the business value of the Company's confidential, proprietary and trade secret information, during Employee's employment with the Company and for twelve (12) months immediately following the termination of that employment with the Company, Employee agrees: (a) that all information regarding actual or prospective (i) partners of the Company (including but not limited to financiers, reinsurance companies, insurance companies, digital start-ups and insurance testing companies) relating to Technology or (ii) customers of the Company relating to Technology, of which Employee learns during his employment with the Company, constitutes "Confidential Information" of the Company; (b) not to, directly or indirectly, induce or solicit any employees of the Company or its affiliates to leave their employment with the Company or any of its affiliates without the unanimous prior written consent of the Chief Executive Officer of the Company. Each of the restrictive covenants set forth above are separate and severable covenants under this Section 6.

7. Termination. The initial term of this Agreement will begin on the date first written above and shall continue until the five-year anniversary of such date ("Initial Term") and shall automatically renew for one year terms thereafter ("Renewal Terms") (collectively the Initial Term and Renewal Terms referred to herein as "Employment Period"). Nevertheless, Employee's employment under this Agreement may be earlier terminated in any of the followings ways: (a) by the Company or Employee by providing written notice no less than thirty (30) days prior to the completion of the Initial Term or a Renewal Term; (b) immediately and automatically upon Employee's death; (c) by the Company, upon not less than 14 days prior written notice to Employee, as a result of Employee's incapacity due to physical or mental illness or injury resulting in Employee's absence from his full-time duties hereunder for four consecutive weeks, subject to Employee's right to cure during the 14-day period; (d) by the Company immediately for Good Cause; (e) by the Company upon not less than 14 days prior written notice to Employee for any reason or no reason; (f) by Employee immediately for Good Reason; or (g) by Employee upon not less than 90 days prior written notice to the Company for any reason or no reason.

8. Effects of Termination. Following any termination of Employee's employment under this Agreement, all compensation and benefits provided to Employee under this Agreement shall cease to accrue as of the date of such termination, except as set forth in the paragraphs below.

8.1 In the case of a termination arising under Section 7(b) from Employee's death or under Section 7(c) from Employee's incapacity, the Company shall, for a period of one month following such death, pay to the estate of Employee an amount equal to Employee's monthly payment of the then current Base Salary, including any earned but unpaid annual compensation and continue the welfare benefit programs contemplated under Section 3.5 above, including paying all premiums for coverage for Employee's dependent family members under all health, hospitalization, disability, dental, life and other insurance plans that the Company maintained at the time of Employee's death.

8.2 In the case of a termination arising under Section 7(e) from the Company's termination without Good Cause, or under Section 7(f) from Employee's termination with Good Reason, then, subject in all cases to Employee's execution and delivery to the Company of a general release and waiver of claims (including claims under contracts, claims under torts, claims as an employee, of the Company or any of its affiliates, if applicable; it being understood that there will not be a release of any rights under the Phantom Equity Agreement or any subsequent equity agreements, as specified in those agreements) in a customary and negotiated form reasonably acceptable to the parties.

8.3 In the case of a termination arising under Section 7(d) from the Company's termination with Good Cause or under Section 7(g) from the resignation of the Employee, then (a) no severance or continued benefits shall be due to Employee.

9. Return of Company Property. All correspondence, reports, records, charts, advertising materials, designs, patents, business plans, financial statements, manuals, memoranda, lists, and other personal property of the Company or its affiliates and in the possession of Employee shall be and remain the property of the Company and its affiliates, as applicable. Any such documentation, information or property that is in the possession of Employee shall be delivered promptly to the Company upon termination of Employee's employment.

10. Non-Competition.

10.1 In consideration of the various benefits provided by the Company to Employee under this Agreement, Employee agrees to be bound by the restrictive covenant set forth in this Section. Employee recognizes and acknowledges the competitive and proprietary nature of the Business. Accordingly, Employee agrees that, during the applicable Restricted Period, as defined below, Employee shall not, without the prior written consent of the Company (which the Company shall not unreasonably withhold or condition), for himself or on behalf of any other person or entity, directly or indirectly, either as principal, agent, stockholder, lender, consultant, officer, director, employee, agent, representative or in any other capacity, own, manage, operate or control, or be concerned, connected or employed by, or otherwise associate in any manner with, or engage in or have any financial interest in, any enterprise engaging in the Restricted Business, as defined below, anywhere in the Restricted Territory, as defined below.

10.2 Nothing contained in this Agreement shall preclude Employee from purchasing or owning common stock or equity in any company engaging in the Restricted Business if such stock is publicly traded and Employee's holdings therein do not exceed one percent of the total number of issued and outstanding shares of capital stock of such company.

10.3 For purposes of this Agreement: (a) "Restricted Period" means the period commencing on the date of this Agreement and ending on the one year anniversary of the expiration or termination of this Agreement if Employee's employment is terminated with Good Cause or if he resigns without Good Reason. (b) "Restricted Business" means the Technology of the Company (including any portion of the Technology conducted through affiliates or subsidiaries of the Company) as conducted as of the date of expiration or termination of this Agreement (and as previously conducted within the two years prior to the date of such expiration or termination), including any substantially similar business that is competitive with the Technology; and (c) "Restricted Territory" means anywhere in the United States where the Company or any of its affiliates, directly or indirectly, conducts the Technology as of the date of expiration or termination of this Agreement.

10.4 If any part of this Section 10 (or any of the restrictive covenants set forth in Section 6 above) should be determined by an arbitrator or court of competent jurisdiction to be unreasonable in duration, geographic area, or scope, then this Section 10 (and Section 6 above, if applicable) is intended to and shall extend only for such period of time, in such geographic area and with respect to such activity as is determined by such arbitrator or court to be reasonable.

11. Indemnification. If Employee is made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than (i) an action directly by the Company against Employee, and other than (ii) such a threatened, pending or completed suit or proceeding brought against Employee and/or the Company by a third- party and which obligates Employee to provide the Company indemnity under Section 13 below), by reason of or in connection with the fact that Employee is or was performing services for the Company under this Agreement, then the Company shall indemnify Employee against all expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement, as actually and reasonably incurred by Employee in connection therewith to the maximum extent permitted by applicable law. In the event that both Employee and the Company are made a party to the same third-party action, complaint, suit or proceeding, the Company agrees to engage competent legal representation, and Employee agrees to use the same representation, provided that if counsel selected by the Company shall have a conflict of interest preventing such counsel from representing Employee, Employee may engage separate counsel of his choosing and the Company shall pay all reasonable attorneys' fees of such separate counsel. To the maximum extent permitted by law, Employee shall not be entitled to indemnification or expense advances under this Agreement in any case where he has exhibited gross negligence or willful misconduct, or performed criminal or fraudulent acts, or engaged in violations of federal securities laws; and the Company may withhold expense advances if it reasonably determines that Employee is not entitled to indemnification hereunder because of gross negligence, willful misconduct, the performance of criminal or fraudulent acts or the violation of federal securities laws.

12. Parachute Payments. If any payment or benefit (any "Payment") Employee would receive from the Company pursuant to or in connection with a "Change in Control" as defined in the Treasury Regulations promulgated under Code §280G would (i) constitute a "parachute payment" within the meaning of Code §280G, and (ii) but for this sentence, be subject to the excise tax imposed by Code §4999 (the "Excise Tax"), then such Payment shall be adjusted to equal to the Reduced Amount. The "Reduced Amount" shall be either (x) the largest portion of the Payment (prior to adjustment) that would result in no portion of the Payment being subject to the Excise Tax or (y) the largest portion of the Payment (prior to adjustment), which, after taking into account all applicable federal, state and local employment taxes, income taxes and the Excise Tax (all computed at the highest applicable marginal rate), results in Employee's receipt, on an after-tax basis, of the greater amount of the Payment (than that calculated under clause (x) above) notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in payments or benefits constituting "parachute payments" is necessary so that the Payment equals the Reduced Amount, reduction shall occur in the following order unless Employee elects, in writing, a different order (provided, however, that such election shall be subject to the Company's approval if made on or after the effective date of the event that triggers the Payment): reduction of cash payments; cancellation of accelerated vesting of stock options, if any; and reduction of employee benefits. In the event that acceleration of vesting of the stock options is to be reduced, such acceleration of vesting shall be cancelled in the reverse order of the date of grant of Employee's stock options (i.e., the earliest granted stock option will be cancelled last) unless Employee elects, in writing, a different order for cancellation.

13. No Conflicting Agreements. Employee represents and warrants to the Company that the execution of this Agreement by Employee and Employee's employment by the Company, and the performance of Employee's duties hereunder, will not violate or breach any agreement with any former or existing employer, client, or any other person, firm or entity, to which agreement Employee is a party or by which agreement Employee is bound. Employee also represents and warrants that he is not affiliated in any manner (whether as a stockholder, member, partner, manager, director, officer, employee or otherwise) with any person or entity that has any business relationship with the Company. Furthermore, Employee agrees to indemnify the Company from and against any and all losses, liabilities, damages and claims, including but not limited to reasonable attorneys' fees and costs and expenses of investigation, arising from any third-party claim made against the Company and based upon or arising out of any non-competition or confidentiality agreement between or among Employee and any such third party.

14. Assignment; Binding Effect. Employee understands that the Company is employing him on the basis of his personal qualifications, experience and skills. Therefore, Employee agrees that he cannot delegate any portion of his obligations of performance under this Agreement. However, Employee can employ, as appropriate, a staff to assist him in carrying out his responsibilities; provided that such assistance may be limited by budgetary constraints and the failure of such staff cannot serve as a reason for inadequate job performance by the Employee. Employee may also not assign any of his rights under this Agreement without the prior written consent of the Company, which consent may be conditioned or withheld in the sole and complete discretion of the Company. Subject to the preceding two sentences, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective heirs, legal representatives, and permitted successors and assigns.

15. Complete Agreement. This Agreement is not a promise of future employment. Except as specifically provided herein, Employee has received no oral representations, and has no other understandings or agreements with the Company (oral or written) or any of its officers, directors or representatives covering the same subject matter as this Agreement. This written Agreement, together with its exhibits and schedules, is the final, complete and exclusive statement and expression of the agreement between the Company and Employee pertaining to Employee's employment. This written Agreement may not be later modified except in a writing signed by a duly authorized officer of the Company and Employee, and no term of this Agreement may be waived except by a writing signed by the party waiving the benefit of such term. This Agreement hereby supersedes any other employment agreements or understandings, written or oral, between the Company and Employee.

16. Notices. Whenever any notice is required hereunder, it shall be given in writing addressed as follows:

If to the Company:

With a copy to:

If to Employee:

Notice shall be deemed to be delivered four days after it is mailed by registered or certified mail, postage prepaid, return receipt requested or one day after it is sent by a reputable overnight courier service. Either party may change the address for notice by notifying the other party of such change in accordance with this Section.

17. Severability; Blue Pencil Doctrine. In the event that any one or more of the provisions of this Agreement or any application thereof, shall be found to be invalid, illegal or otherwise unenforceable, the validity, legality and enforceability of the remaining provisions and any application thereof, shall not in any way be affected or impaired thereby. To the extent any provision of this Agreement is determined by an arbitrator or court of competent jurisdiction to be unenforceable, the arbitrator or court of competent jurisdiction shall reform any such provision to make it enforceable. The provisions of this Agreement shall, where possible, be interpreted so as to sustain their legality and enforceability.

18. Dispute Resolution.

18.1 To the greatest extent possible, the parties will endeavor to resolve any disputes relating to the Agreement through amicable negotiations. Failing an amicable settlement, any controversy, claim or dispute arising under or relating to this Agreement, including the existence, validity, interpretation, performance, termination or breach of this Agreement, will finally be settled by binding arbitration before a three person arbitrator (the "Arbitration Tribunal") which will be jointly appointed by the parties. The Arbitration Tribunal shall self-administer the arbitration proceedings utilizing the Commercial Rules of the American Arbitration Association ("AAA"); provided, however, the AAA shall not be involved in administration of the arbitration. The Arbitration Tribunal must consist of one retired judge of a state or federal court of the United States or a licensed lawyer with at least 15 years of corporate or commercial law experience.

18.2 The arbitration will be held in Minneapolis, Minnesota. Each party will have discovery rights as provided by the Federal Rules of Civil Procedure within the limits imposed by the arbitrators. It is the intent of the parties that any arbitration will be concluded as quickly as reasonably practicable. Once commenced, the hearing on the disputed matters will be held four days a week until concluded, with each hearing date to begin at 9:00 a.m. and to conclude at 5:00 p.m. The arbitrators will use all reasonable efforts to issue the final written report containing award or awards within a period of five business days after closure of the proceedings. Failure of the arbitrators to meet the time limits of this Section will not be a basis for challenging the award. The Arbitration Tribunal will not have the authority to award punitive damages to either party. Each party will bear its own expenses, but the parties will share equally the expenses of the Arbitration Tribunal. The Arbitration Tribunal shall award attorneys' fees and other related costs payable by the losing party to the successful party as it deems equitable. This Agreement will be enforceable, and any arbitration award will be final and non-appealable, and judgment thereon may be entered in any court of competent jurisdiction. Notwithstanding the foregoing, claims for injunctive relief for breaches of Sections 4, 5, 6, 9 and 10, and claims to enforce arbitration awards, may be brought in a state or federal court in the state court in Minnesota.

19. Equitable Relief. Employee acknowledges and agrees that it would be difficult to fully compensate the Company for damages resulting from the breach or threatened breach of the covenants contained in Sections 4, 5, 6, 9 and 10 of this Agreement, and that any such breach may cause the Company irreparable harm. Accordingly, the Company will be entitled to seek injunctive relief, including but not limited to temporary restraining orders, preliminary injunctions and permanent injunctions, to enforce the terms thereof, without the need to demonstrate irreparable harm or, to the extent permitted by applicable law, the need to post any bond. This right to injunctive relief will not, however, diminish any of the Company's other legal rights under this Agreement or at law.

20. Governing Law; Jurisdiction and Venue. This Agreement shall in all respects be construed according to the laws of the State of Minnesota, notwithstanding the conflicts-of-law provisions of such state. Subject to the provisions of Section 18 above, any claims for injunctive relief arising under this Agreement, and any claims to enforce an earlier issued arbitration award, shall be exclusively decided by a state or federal court in the State of Minnesota. Employee hereby irrevocably waives his right, if any, to have any disputes between him and the Company arising out of or related to this Agreement decided in any jurisdiction or venue other than a state or federal court in the State of Minnesota. Furthermore, Employee hereby irrevocably (a) waives any objection that he might have now or hereafter to the foregoing jurisdiction and venue of any such proceeding, (b) submits to the exclusive jurisdiction of any such court set forth above in any such proceeding, and (c) waives any claim or defense of inconvenient forum.

21. Further Assurances. Each party shall, without further consideration, execute such additional documents as may be reasonably required in order to carry out the purposes and intents of this Agreement.

22. Interpretation. Employee has had a meaningful opportunity to work with legal counsel of his choosing and has either availed himself of such opportunity to his satisfaction or has independently determined not to seek such counsel. Furthermore, Employee has a meaningful opportunity to review and negotiate the terms and conditions of this Agreement. Since both parties have participated in the negotiation, drafting and finalization of their business relationship and documented such relationship in this Agreement, this Agreement will not be interpreted as though it has been drafted solely by the Company.

23. Waivers. No term or condition of this Agreement will be deemed to have been waived nor shall there be any estoppel to enforce any provision hereof, except by a written instrument executed by the party charged with waiver or estoppel. A party's delay, waiver or failure to enforce any of the terms of this Agreement or any similar agreement in one instance shall not constitute a waiver of its rights hereunder with respect to other violations of this or any other agreement.

24. Counterparts and Delivery. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. Counterpart signatures delivered by facsimile or other means of electronic transmission shall be valid and binding to the same as the delivery of original ink signatures.

IN WITNESS WHEREOF, the parties have executed this Employment Agreement as of the date first above written.

COMPANY:

GWG HOLDINGS, INC.

By: /s/ Jon Sabes

Name: Jon Sabes

Title: CEO

EMPLOYEE:

Brian Chen

/s/ Brian Chen

Name: Brian Chen

Signature Page]

Exhibit A

Employment Activities

Title: Chief Science Officer (“CSO”)

The Chief Science Officer will be responsible for leading the development of commercializing epigenetic predictive technology.

The scientific efforts will involve a variety of challenging endeavors as Life Epigenetics seeks to commercialize epigenetic technology initially for the life insurance industry, but even more broadly for the health and wellness industries.

Job Description:

The Chief Science Officer will oversee the scientific development of epigenetic biomarkers that are predictive as to individual health and wellness. In addition, the CSO will work to understand the integration of individual health and wellness measurements into insurance underwriting.

The area of responsibility for this role encompasses both scientific and analytic expertise. The CSO is required to have and maintain expertise in the biology and epidemiology of human health, biomarkers, functional testing, and mortality risk factors. In addition, the CSO must have the experience in developing analytical pipelines for “big data” and stay on the cutting edge of human health research in order to identify new measures of life expectancy.

Responsibilities/Goals:

1. Design epigenetic signatures that mirror established measures of health and wellness.
2. Create a panel of epigenetic signatures capable of replacing the need for paramedical testing of blood/urine used in life insurance underwriting.
3. Work to create an intellectual property strategy that protects the epigenetic signatures developed, as well as maintain the freedom to operate around any outstanding intellectual property.
4. Actively participate (and manage where appropriate) on organizational decision making on the operational activities and corporate direction in support of strategic goals.

Compensation:

Base Salary: \$175,000

Incentive Compensation:

- Cash compensation, under development and to be proposed and approved by the CEO, that shall be based upon the attainment of specific operational benchmarks supporting the development of epigenetic signatures capable of replacing life insurance paramedical underwriting.
- Phantom Equity Rights (“PERs”) representing 3% of the Valuation Amount created in the business of Life Epigenetics, Inc. (“LEGX”). PERs shall vest pro-rata over a 5 year term, beginning on the original start date of February 6, 2017.

Benefits: Standard Benefits Health, dental, and vision insurance. 401K.

Vacation: Standard Benefits

Others: Tele-work and travel and registration for business meetings, conferences, workshops, and trainings related to health biomarkers, analytics, and aging, as required.

Exhibit B

Form of Phantom Equity Rights Agreement

B-11



October 9, 2019

Michael Will**RE: OFFER OF EMPLOYMENT**

Dear Michael:

The teams of Insurtech Holdings LLC, YouSurance General Agency LLC, and Life Epigenetics Inc. (collectively, "Company", "Companies," "our", "we" or "us") are pleased to offer you the position of **General Counsel**, reporting to Jon Sabes, Chief Executive Officer.

We are very excited to make you this offer and have you join our team!

Your Position:

The key accountabilities and duties of the General Counsel position include but are not limited to the following:

- Develop a comprehensive understanding of the company's businesses and business practices; engage in a proactive style of legal practice in order to best serve internal clients.
- Educate key stakeholders on risk management and provide practical guidance to cross-functional teams that takes legal and business considerations into account.
- Deliver counsel to all levels and departments of the company on legal risks associated with current and proposed business activities and strategies.
- Provide legal guidance related to product creation and filing of insurance forms, underwriting, and regulatory compliance. Work with carrier, reinsurance, and distribution partners in the sale of company products and/or implementation of company technology.
- Collaborate with business partners to structure and execute commercial transactions. This includes reviewing, drafting, and negotiating a variety of commercial contracts such as agreements relating to information technology, intellectual property, procurement, service, consulting, distribution, sales, license, confidentiality and other similar agreements.
- Manage company transactions such as financing arrangements, investment opportunities, etc.
- Review sales and marketing materials, update disclosure language, and provide guidance to internal teams.
- Work with and advise internal business partners on compliance with U.S. federal, state, and global laws and regulations, including those related to information technology and data privacy & security, and contribute to the development and improvement of company policies, trainings, and best practices.

InsurTech Holdings, LLC | 220 South Sixth Street, Suite 1200 | Minneapolis, MN 55402

- Provide legal counsel relative to intellectual property including patent, trademark, and copyright, and engage/manage outside counsel in the prosecution of related IP applications.
- Respond to and provide legal guidance regarding state regulatory inquiries, examinations, and/or audits, and interact with internal business partners, outside counsel, and/or regulators in developing and implementing appropriate strategies and/or responses.
- Review, evaluate, and manage threatened or pending litigation, assigning matters to outside counsel as necessary.
- Advise on labor and employment law matters to include hiring, disciplinary, terminations, discrimination, wage & hour issues, disability accommodation, state and federal compliance, investigations and traditional labor law.
- Draft, review, and update company policies and procedures.
- Prepare, review and supervise the preparation of investor/shareholder communications- to ensure that all reporting requirements and timelines are met.
- Additional legal and/or compliance responsibilities as determined by the Parties.

The key consideration of the terms of our offer of employment are in Exhibit A. If these terms of employment are acceptable, please indicate your acceptance below.

Sincerely,

Jon Sabes
Chief Executive Officer

ACCEPTED:

Michael Will Date

POSITION: General Counsel
Michael Will

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REPORT: You will report to Jon Sabes, and his designees as directed.

START DATE: October 21, 2019

LOCATION: You will work out of the Minneapolis office.

COMPENSATION: *Base Salary* - \$162,000 per annum

Your base salary will be (gross), less applicable income tax and other legally required withholding and any deductions that you authorize. Salaries are paid biweekly directly into nominated bank account.

Signing Bonus - \$4,361.53

You will receive a one-time bonus payment due on the first pay period after your start date.

Incentive Compensation - You will be eligible to participate in our incentive compensation plan that will provide you with an annual incentive compensation in the form of cash and stock options based upon your performance and the company's achievement of certain milestones. We expect this incentive compensation award to be paid semi-annually and equate to up to 25% of your annual Base Salary. Incentive compensation will be discretionary by the Company.

EXPENSES:

TERM: BENEFITS:

We will reimburse you for all appropriate and reasonable business expenses you have incurred in performing your duties.

The term of your employment is at-will.

As a regular full-time employee, you will be eligible to participate in the following sponsored benefits, subject to the terms and conditions of each benefit plan or program:

- 401kPlan
- **Medical, Dental and Vision** - *(For you and your eligible dependents).*
- **Life and AD&D Insurance** - *(Paid by for by us in an amount of 1x your Annual Salary).*
- **Short-Term and Long-Term Disability Insurance** - *(Paid by us).*
- **Paid Time Off (PTO)** - *(You will receive a total of fifteen (15) days per year, comprised of Vacation and Sick Days).*
- **Holidays** - *(You are entitled to seven (7) Paid Holidays).*
- Other Voluntary Benefits

Several of the benefits are governed by insurance contracts and benefits summaries, and the terms and conditions in those materials control. Others are based on our established policies and procedures. Like other employers, we review our benefits regularly and reserve the right to add new benefits, modify existing programs, and terminate them, as we deem necessary. All terms and conditions of employment are subject to modification from time to time as we deem necessary or appropriate.

CERTIFICATION
PURSUANT TO RULES 13a-14(a) AND 15d-14(a)
UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Tyler Danielson, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of FOXO Technologies Inc. for the period ended September 30, 2022;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: November 21, 2022

By: /s/ Tyler Danielson
Tyler Danielson
Interim Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION
PURSUANT TO RULES 13a-14(a) AND 15d-14(a)
UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Robby Potashnick, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of FOXO Technologies Inc. for the period ended September 30, 2022;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: November 21, 2022

By: /s/ Robby Potashnick
Robby Potashnick
Chief Financial Officer
(Principal Financial and Accounting Officer)

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of FOXO Technologies Inc. (the "Company") on Form 10-Q for the quarterly period ended September 30, 2022, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Jon Sabes, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 21, 2022

/s/ Tyler Danielson

Name: Tyler Danielson
Title: Interim Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of FOXO Technologies Inc. (the "Company") on Form 10-Q for the quarterly period ended September 30, 2022, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Robby Potashnick, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 21, 2022

/s/ Robby Potashnick

Name: Robby Potashnick

Title: Chief Financial Officer
(Principal Financial and Accounting Officer)